

## 2005–2006 LEGISLATIVE REVIEW

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### REVIEW EDITOR'S NOTE

I am very pleased to present the eighth annual edition of *Animal Law's* Legislative Review. This year's review surveys developments in both federal and state animal-related legislation from 2005 through early 2006. The legislation this year reflects a trend of mounting interest among legislators regarding animal issues, but also demonstrates

the difficulties inherent in pushing legislation through to enactment. However, even when not all bills succeed in becoming law, it is important to recognize the value of having more legislators who are willing to sponsor and support animal-friendly legislation.

At the federal level, Ms. Marjorie Berger reports on significant advances and setbacks in federal legislation this year. She examines the saga of the Horse Slaughter Amendment to the 2006 Agriculture Appropriations Bill; the failure of key measures such as the Downed Animal Amendment, the Pet Protection Amendment, and animal fighting prohibition enforcement provisions; the successful blocking of another attempt to drill in the Arctic National Wildlife Refuge; the benefits to wildlife from the new transportation bill; and, finally, the fate of the Pets Evacuation and Transportation Standards Act, which is aimed at preventing some of the chaos and tragedy endured by pet owners following a natural disaster such as Hurricane Katrina.

Mr. Rahul Kukreti reports on this year's developments in state legislation, including state efforts to prohibit internet hunting; passage of constitutional amendments codifying a "right to hunt"; attempts to target acts of animal and ecological terrorism; increased state awareness regarding the dangers associated with antibiotic use in factory farms; the regulation and inspection of factory farms; confinement of animals in factory farms; further state attention to the issue of foie gras; and state approaches to breed-specific legislation and breed discrimination.

This year, at both the state and federal level, legislators who sponsored or supported important and sometimes controversial bills benefiting animals provided a valuable service by helping to educate fellow legislators and the public about key animal issues and by making future passage of increasingly innovative and effective pro-animal legislation more feasible. It is our hope that this Legislative Review section also serves to educate by providing analysis of the progress of animal-related legislation at the state and federal levels, and by monitoring significant developments in animal law.

*Sunrise Cox*  
*Legislative Review Editor*

## I. FEDERAL LEGISLATION

### A. *Appropriations Bills for Fiscal Year 2006*

Approximately two-thirds of the federal budget is allocated to mandatory spending governed by permanent laws such as Social Security and Medicare.<sup>1</sup> All remaining funds comprise the federal discretionary budget, which Congress allots through thirteen annual

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<sup>1</sup> *Unauthorized Appropriations and Expiring Authorizations*, Cong. Budget Off. Rpt. 1-2 (Cong. Budget Off. Jan. 15, 1998) (available at <http://www.cbo.gov/ftpdocs/3xx/doc315/unauth98-h.pdf>).

appropriations bills that must be passed annually and usually are effective for only one fiscal year.<sup>2</sup> Legislators often use amendments to appropriations bills to raise issues that have been introduced as stand-alone legislation but have been delayed in committees.<sup>3</sup> In 2005, legislators used both the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006<sup>4</sup> (Agriculture Appropriations Bill) and the Department of Defense Appropriations Act, 2006<sup>5</sup> (Defense Appropriations Bill) to advance important animal causes.<sup>6</sup>

### 1. *Agriculture Appropriations Bill*

The Agriculture Appropriations Bill includes the Horse Slaughter Amendment,<sup>7</sup> which was one of the most important animal-friendly federal legislative provisions to pass in 2005. Unfortunately, the United States Department of Agriculture (USDA) recently granted a petition that will seriously undermine the purpose of the Amendment.<sup>8</sup> Two other significant animal provisions, the Downed Animal<sup>9</sup> and Pet Protection Amendments,<sup>10</sup> were stripped from the Agriculture Appropriations Bill during the resolving differences conference committee meetings (resolving differences meetings).<sup>11</sup> The final bill was passed in the House on October 28, 2005 by a vote of 318-63 and in the Senate

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> See e.g. 109 Cong. Rec. H4249 (daily ed. June 8, 2005) (statements of Rep. John Spratt explaining the use of an appropriations bill to fight for stalled horse slaughter legislation).

<sup>4</sup> Pub. L. No. 109-97, 119 Stat. 2120 (2005).

<sup>5</sup> Pub. L. No. 109-48, 119 Stat. 2680 (2005).

<sup>6</sup> See Humane Socy. U.S., *The System Works: Horse Slaughter Ban Saved from Last Minute Threat*, [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html) (Oct. 27, 2005) [hereinafter Humane Socy. U.S., *The System Works*] (explaining how legislators used amendments to the Agriculture Appropriations Bill to pass animal-friendly legislation); Humane Socy. U.S., *DoD Appropriations Bill Gives Polar Bears a Reprieve, Goes Easy on Cockfighters Who Could Help Spread Avian Flu*, [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html) (Dec. 22, 2005) [hereinafter Humane Socy. U.S., *DoD Appropriations Bill*] (outlining various sections of the Defense Appropriations Bill used for animal advocacy).

<sup>7</sup> 119 Stat. at 2163.

<sup>8</sup> Humane Socy. U.S., *HSUS and Others Seek Injunction to Halt USDA in Its Attempt to Buck Congress on Horse Slaughter*, [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/usda\\_threatens\\_horse\\_slaughter.html](http://www.hsus.org/pets/pets_related_news_and_events/usda_threatens_horse_slaughter.html) (Feb. 22, 2006).

<sup>9</sup> Sen. Amend. 1730, 109th Cong. (2005) (amendment to H.R. 2744).

<sup>10</sup> Sen. Amend. 1729, 109th Cong. (2005) (amendment to H.R. 2744).

<sup>11</sup> Human Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html). These meetings are held to resolve the differences between the House and Senate bills so Congress can present a single bill to the President. *Id.* Because the Downed Animal and Pet Protection Amendments had no House counterparts, they were particularly vulnerable to being cut during the resolving differences meetings. *Id.*

on November 3, 2005 by a vote of 81-18.<sup>12</sup> The bill was signed into law on November 10, 2005.<sup>13</sup>

*a. The Horse Slaughter Amendment*

Representatives Nick Joe Rahall II (D-W. Va.), John Spratt (D-S.C.), and John Sweeney (R-N.Y.) introduced the Horse Slaughter Amendment to the House on September 20, 2005.<sup>14</sup> But not long after the Agriculture Appropriations Bill had been approved by Congress and signed into law by the President, the USDA granted a petition that seriously undermines the effect of the bill's Horse Slaughter Amendment.<sup>15</sup> Despite this disappointing last minute turn of events, the Amendment still marks a significant and well-fought victory toward increased protection of American horses. As the Representatives explained, the United States houses three foreign-owned slaughterhouses that purchase approximately sixty-five thousand American horses each year, the meat of which is exported to foreign countries for human consumption.<sup>16</sup> No American businesses profit from these foreign operations;<sup>17</sup> and most Americans disapprove of slaughtering horses for human consumption.<sup>18</sup> Yet, because the Federal Meat Inspection Act requires inspection of all meat to be processed for human consumption,<sup>19</sup> American tax dollars fund the inspections of these slaughtered horses.<sup>20</sup> The Horse Slaughter Amendment ends American subsidization of this foreign-based industry by prohibiting the use of federal funds for the inspection of horses being sent to slaughterhouses for human consumption.<sup>21</sup>

During House debates, Representative Henry Bonilla (R-Tex.) and other Representatives who opposed the Amendment questioned its potentially drastic consequences.<sup>22</sup> They argued that the increase in expense to support unwanted horses would result in already overwhelmed facilities having to spread their resources even thin-

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<sup>12</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR02744:@@R> (accessed Mar. 3, 2006).

<sup>13</sup> 119 Stat. at 2120.

<sup>14</sup> 151 Cong. Rec. S10218 (daily ed. Sept. 20, 2005).

<sup>15</sup> Humane Socy. U.S., *supra* n. 8, at [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/usda\\_threatens\\_horse\\_slaughter.html](http://www.hsus.org/pets/pets_related_news_and_events/usda_threatens_horse_slaughter.html).

<sup>16</sup> 151 Cong. Rec. at S10218-19 (quoting *Save the Horses*, Washington Times A20 (Sept. 15, 2005)). The meat is primarily exported to Japan, Italy, Belgium, and France, where horse meat is considered a delicacy. *Id.*

<sup>17</sup> 151 Cong. Rec. at S10220.

<sup>18</sup> 151 Cong. Rec. at S10219 (quoting Ltr. from Paula Bacon, Mayor of Kaufman, Tex., to Sen. John Ensign, *Support for the Horse Slaughter Amendment* (Sept. 6, 2005)).

<sup>19</sup> 21 U.S.C. § 603(a) (2000).

<sup>20</sup> 151 Cong. Rec. H4248 (daily ed. June 6, 2005).

<sup>21</sup> *Id.*

<sup>22</sup> See generally 151 Cong. Rec. at H4248-51 (debating the benefits and potential consequences of the Horse Slaughter Amendment).

ner;<sup>23</sup> but the statistics do not support these claims.<sup>24</sup> In the five states that have banned horse slaughter for human consumption, cases of horse neglect and abuse have not increased.<sup>25</sup> In fact, there have been virtually no negative consequences.<sup>26</sup> Ultimately, the House passed the Amendment by a vote of 269-158.<sup>27</sup>

The Senate passed an identical amendment in its version of the Agriculture Appropriations Bill.<sup>28</sup> Because the House and Senate versions of the amendments were identical, the Horse Slaughter Amendment should have been automatically included in the final Agriculture Appropriations Bill and immune to alteration during the resolving differences meetings.<sup>29</sup> Senator Bonilla, however, tried to use the meetings as a final attempt to strip the Amendment from the final bill.<sup>30</sup> A Washington Times editorial article describing the underhanded activity<sup>31</sup> revitalized support efforts,<sup>32</sup> and Congress passed the Amendment, albeit in a slightly weaker form.<sup>33</sup> The final version allows for a four month phase-in period and includes language that thwarts future use of appropriations bills for horse slaughter prevention.<sup>34</sup>

After the bill was signed into law, the foreign-owned slaughterhouses petitioned the USDA, offering to pay the USDA to inspect their horses in exchange for permission to continue their operations.<sup>35</sup> The USDA granted the petition, thereby undermining Congress's attempt to protect American horses from being slaughtered for human consumption.<sup>36</sup> In response, The Humane Society of the United States (HSUS) and other animal advocacy groups filed a motion for a tempo-

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<sup>23</sup> 151 Cong. Rec. at H4250 (statement of Rep. Goodlatte).

<sup>24</sup> 151 Cong. Rec. at H4249 (statement of Rep. Whitfield).

<sup>25</sup> 151 Cong. Rec. at H4249 (statement of Rep. Spratt).

<sup>26</sup> *Id.*

<sup>27</sup> Lib. Cong., *Amendments for H.R. 2744*, [http://thomas.loc.gov/cgi-bin/bdquery/L?d109:/temp/~bdaWB6t:1\[1-145\]\(Amendments\\_For\\_H.R.2744\)&/temp/~bdkdjV](http://thomas.loc.gov/cgi-bin/bdquery/L?d109:/temp/~bdaWB6t:1[1-145](Amendments_For_H.R.2744)&/temp/~bdkdjV) (accessed Mar. 15, 2006).

<sup>28</sup> *Id.*

<sup>29</sup> See generally Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html) (explaining that the resolving differences meetings are generally used only to resolve conflicting versions of House and Senate bills).

<sup>30</sup> *Editorial: Bonilla Attempted to Thwart Majority*, San Antonio Express-News 6B (Oct. 27, 2005) (available at <http://www.mysanantonio.com/opinion/editorials/stories/MYSA102705.1O.editorial.bonilla.b33fd31.html>) (site no longer available).

<sup>31</sup> *Slaughterhouse on the Hill*, Washington Times A14 (Oct. 25, 2005) (available at <http://www.washtimes.com/op-ed/20051024-094721-4515r.htm>).

<sup>32</sup> Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html).

<sup>33</sup> *Id.*

<sup>34</sup> 119 Stat. at 2163.

<sup>35</sup> Humane Socy. U.S., *supra* n. 8, at [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/usda\\_threatens\\_horse\\_slaughter.html](http://www.hsus.org/pets/pets_related_news_and_events/usda_threatens_horse_slaughter.html).

<sup>36</sup> *Id.*

rary restraining order to stop the USDA's new "fee-for-service" regulation from going into effect until a hearing on the rule is held.<sup>37</sup>

Representatives Sweeney and Spratt are also continuing to fight to protect American horses.<sup>38</sup> On February 1, 2005, they re-introduced The American Horse Slaughter Prevention Act,<sup>39</sup> which would permanently prohibit the sale and transport of American horses to be sold for human consumption.<sup>40</sup> The bill was referred to the Subcommittee on Commerce, Trade and Consumer Protection on February 25, 2005.<sup>41</sup> At the time of this writing, no hearings have been scheduled on this bill.<sup>42</sup>

*b. The Downed Animal Amendment*

Senator Daniel Akaka (D-Haw.) introduced an amendment to the Agriculture Appropriations Bill that would have prohibited using downed livestock, including cattle, sheep, pigs, goats, and horses, for human consumption.<sup>43</sup> Downed livestock are animals too sick to walk or stand unassisted.<sup>44</sup> These animals suffer tremendously on the long journeys to slaughterhouses, often being pushed by bulldozers or dragged by chains if they collapse en route.<sup>45</sup> By prohibiting the use of federal funding to inspect downed animals at slaughterhouses, the Amendment would have encouraged animal handlers to humanely euthanize these animals rather than risk transporting them to a slaughterhouse that may refuse to accept them.<sup>46</sup>

The Downed Animal Amendment also would have protected livestock and humans from infectious diseases, including bovine spongiform encephalopathy (BSE), more commonly known as mad cow disease.<sup>47</sup> Because BSE is found in a higher percentage of downed livestock than general cattle populations, and because downed livestock is used for human consumption, the USDA has recognized downed live-

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<sup>37</sup> Pl.'s Mot. for T.R.O & Prelim. Inj., *Humane Socy. of the U.S. v. Johanns*, (Feb. 22, 2006) (available at <http://www.hsus.org/web-files/PDF/HorsesPI.pdf>) (site no longer available).

<sup>38</sup> Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html).

<sup>39</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.00503>: (accessed Feb. 27, 2006).

<sup>40</sup> H.R. 503, 109th Cong. (Feb. 1, 2005).

<sup>41</sup> Lib. Cong., *supra* n. 39, at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.00503>: (accessed Feb. 27, 2006).

<sup>42</sup> *Id.*

<sup>43</sup> 151 Cong. Rec. S10221(daily ed. Sept. 20, 2005).

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

<sup>45</sup> Humane Socy. U.S., *The HSUS Demands Ban on Processing Downed Animals for Human Consumption*, [http://www.hsus.org/press\\_and\\_publications/press\\_releases/the\\_hsus\\_demands\\_ban\\_on\\_processing\\_downed\\_animals\\_for\\_human\\_consumption.html](http://www.hsus.org/press_and_publications/press_releases/the_hsus_demands_ban_on_processing_downed_animals_for_human_consumption.html) (Dec. 24, 2003).

<sup>46</sup> Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html).

<sup>47</sup> 151 Cong. Rec. at S10221.

stock as a serious threat in the spread of BSE in the United States.<sup>48</sup> While all American cattle intended for human consumption are inspected before slaughter, studies have shown that BSE is often confused with other diseases and regularly goes undetected in the inspection process.<sup>49</sup> By refusing acceptance of downed livestock for human consumption, the Downed Animal Amendment would have reduced the threat of passing infectious diseases like BSE through the food chain.<sup>50</sup> Unfortunately, the Amendment was cut from the final Agriculture Appropriations Bill during the resolving differences meetings.<sup>51</sup> Because these meetings are held behind closed doors, the exact reason for the cut is unknown.<sup>52</sup> Historically, however, strong lobbying from the cattle and beef industries has played a crucial role in blocking downed animals legislation.<sup>53</sup>

Senator Akaka also introduced stand-alone legislation that would protect downed animals, the Downed Animal Protection Act.<sup>54</sup> The bill has twenty-three co-sponsors and was referred to the Senate Committee on Agriculture, Nutrition and Forestry on September 28, 2005.<sup>55</sup> Representative Gary Ackerman (D-N.Y.) introduced a similar House Bill, H.R. 3931, which has 137 co-sponsors and was referred to the House Committee on Agriculture.<sup>56</sup> At the time of this writing, no hearings have been scheduled for either of these bills.<sup>57</sup>

### c. *The Pet Protection Amendment*

Senator Akaka also introduced the Pet Protection Amendment to the Agriculture Appropriations Bill.<sup>58</sup> Based on his Pet Safety and Protection Act,<sup>59</sup> Senator Akaka's Amendment would have prohibited federal funding of research facilities that purchase animals from class "B" animal dealers.<sup>60</sup>

Animal advocates have long opposed class "B" dealers' fraudulent and inhumane practices.<sup>61</sup> These dealers frequently obtain their ani-

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html).

<sup>52</sup> *Id.* (referring to *Slaughterhouse on the Hill*, Washington Times A14 (Oct. 25, 2005)).

<sup>53</sup> Gary Ackerman, *Ackerman Statement on Downed Animal Ban*, <http://www.house.gov/ackerman/press/downedanimalban.htm> (Dec. 30, 2003).

<sup>54</sup> Sen. 1779, 109th Cong. (Sept. 28, 2005).

<sup>55</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN01779:@@X> (accessed Mar. 1, 2006).

<sup>56</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR03931:@@X> (accessed Feb. 27, 2006).

<sup>57</sup> *Id.*

<sup>58</sup> 151 Cong. Rec. S10221 (daily ed. Sept. 20, 2005).

<sup>59</sup> Sen. 451, 109th Cong. (Feb. 17, 2005).

<sup>60</sup> 151 Cong. Rec. at S10221.

<sup>61</sup> See generally Humane Socy. U.S., *Notorious Animal Dealer Loses License and Pays Record Fine*, [http://www.hsus.org/animals\\_in\\_research/animals\\_in\\_research\\_](http://www.hsus.org/animals_in_research/animals_in_research_)

mals, many of which are former family pets, through deceptive means such as theft and “free to good home” advertisements.<sup>62</sup> Class “B” dealers are also notorious for violating the Animal Welfare Act by housing animals in inhumane conditions and denying them sufficient food, water, and care.<sup>63</sup> Senator Akaka introduced the Pet Protection Amendment one month after the largest USDA-licensed class “B” animal dealer, C.C. Baird, was arrested for operating a pet-theft ring, falsifying animal acquisition records, and violating the Animal Welfare Act.<sup>64</sup>

Despite the C.C. Baird case, research organizations such as the Association of American Medical Colleges continue to argue that class “B” dealers acquire their animals from credible sources.<sup>65</sup> These organizations fiercely opposed the Pet Protection Amendment claiming that it would do little to protect animals while seriously impeding research efforts.<sup>66</sup> Supporters of the Amendment argue that animals from class “B” dealers are unsuitable for research because, based on the dealers’ deceptive practices such as pet theft and record falsifications, the animals’ histories are too uncertain.<sup>67</sup>

The Senate approved Akaka’s Amendment by voice vote on September 20, 2005,<sup>68</sup> but it was ultimately struck from the final Agriculture Appropriations Bill.<sup>69</sup> The Conference Committee, however, recognized the importance of pet protection, and directed the Secretary of Agriculture to prepare a report on the enforcement of class “B” dealer regulations by March 1, 2006.<sup>70</sup>

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news/animal\_dealer\_loses\_license\_and\_pays\_record\_fine.html (Feb. 23, 2005) (discussing some of the practices of class “B” animal dealers in reference to a recent case brought against a dealer).

<sup>62</sup> 151 Cong. Rec. at S10221.

<sup>63</sup> Humane Socy. U.S., *The System Works*, *supra* n. 6, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/system\\_works.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/system_works.html).

<sup>64</sup> Last Chance for Animals, *CC Baird Violations Charged by the USDA (Synopsis)*, [http://www.lcanimal.org/invest/baird/baird\\_synopsis.htm](http://www.lcanimal.org/invest/baird/baird_synopsis.htm) (accessed Feb. 27, 2006).

<sup>65</sup> Ltr. from Jordan J. Cohen, M.D., Pres., Assoc. of Am. Med. Colleges, to Thad Cochran, Chairman, Comm. on Appropriations, *Oppositions to the Pet Protection Amendment* (Sept. 29, 2005) (available at <http://www.aamc.org/advocacy/library/research/corres/2005/092905.pdf>).

<sup>66</sup> *Id.*; Press Release, Found. Biomedical Research, *Defeat of Akaka Amendment Hailed as Victory for Medical Research* (Oct. 26, 2005) (available at <http://www.fbresearch.org/Journalists/Releases/102605AkakaDefeat.pdf>).

<sup>67</sup> 151 Cong. Rec. at S10221.

<sup>68</sup> Lib. Cong., *Amendments for H.R. 2744*, [http://thomas.loc.gov/cgi-bin/bdquery/L?d109:/temp/~bdaDo1o:1\[1-145\]\(Amendments\\_For\\_H.R.2744\)&/temp/~bdPuJI](http://thomas.loc.gov/cgi-bin/bdquery/L?d109:/temp/~bdaDo1o:1[1-145](Amendments_For_H.R.2744)&/temp/~bdPuJI) (accessed Mar. 3, 2006).

<sup>69</sup> Press Release, Found. Biomedical Research, *supra* n. 66, at <http://www.fbresearch.org/journalist/press-releases/102605AkakaDefeat.pdf>.

<sup>70</sup> H.R. Rpt. 109-255 (Oct. 26, 2005) (available at <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr255&dbname=109&>).



## 2. *Defense Appropriations Bill*

On December 30, 2005, President Bush signed into law the Defense Appropriations Bill, which authorizes spending on, among other things, military personnel, emergency wartime preparedness, and disaster assistance.<sup>71</sup> Although avian and pandemic influenza preparedness was a key component of this year's bill, Congress failed to use the bill to address a significant threat in facilitating the spread of avian flu in America: the illegal transport of fighting birds.<sup>72</sup> Worse, some congressional leaders actually attempted to use the national defense bill to allow for oil drilling in the Arctic National Wildlife Refuge.<sup>73</sup> Fortunately, many legislators recognized that arctic drilling does not belong in a defense appropriations bill and stripped the provision from the final version.<sup>74</sup>

### *a. Animal Fighting Prohibition Enforcement Provision*

Representatives Roscoe Bartlett (R-Md.), Elton Gallegly (R-Cal.), and Mark Green (R-Wis.) sent a letter to the House leadership requesting that the language of the Animal Fighting Prohibition Enforcement Act (AFPEA) be added to the final Defense Appropriations Bill report.<sup>75</sup> The AFPEA seeks to amend the Animal Welfare Act by increasing the penalty for animal fighting violations from a misdemeanor to a felony.<sup>76</sup> The Congressmen sought inclusion of this language in the Defense Appropriations Bill because the President had declared avian flu preparedness as a key issue in the bill, and the spread of avian flu has been linked to cockfighting.<sup>77</sup>

Avian flu is an infectious disease of birds that is particularly dangerous for domestic poultry.<sup>78</sup> The flu has affected birds for over one hundred years, but the first documented human infections occurred in Hong Kong in 1997.<sup>79</sup> That episode affected eighteen people, six of whom died.<sup>80</sup> To avoid a pandemic, Hong Kong destroyed its entire

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<sup>71</sup> 119 Stat. at 2680.

<sup>72</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>73</sup> *Id.*

<sup>74</sup> CNN.com, *Senate Blocks Attempt to Allow ANWR Drilling*, <http://www.cnn.com/2005/POLITICS/12/21/arctic.drilling.ap/> (Dec. 21, 2005) (accessed Feb. 10, 2006) (site no longer available).

<sup>75</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>76</sup> H.R. 817, 109th Cong. (Feb. 15, 2005).

<sup>77</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>78</sup> World Health Org., *Avian Influenza ("Bird Flu") Fact Sheet*, [http://www.who.int/mediacentre/factsheets/avian\\_influenza/en/](http://www.who.int/mediacentre/factsheets/avian_influenza/en/) (Feb. 2006).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

poultry population.<sup>81</sup> Since 1997, human avian flu cases have appeared in Turkey, Vietnam, Korea, and Thailand.<sup>82</sup>

In 2004, the World Health Organization (WHO) linked the spread of avian flu to cockfighting<sup>83</sup> and claimed that as many as eight confirmed human avian flu cases may have been caused by participation in the sport.<sup>84</sup> Cockfighting is a violent activity where two gamecocks with razor-sharp picks strapped to their feet are entrapped in a ring to fight to the death.<sup>85</sup> Victorious gamecocks usually leave the ring with severe injuries such as missing eyes, punctured lungs, and broken bones.<sup>86</sup> Gamecock handlers often suck the blood out of their birds' wounds to alleviate the pain and pressure.<sup>87</sup> This contact with the birds' blood and other bodily fluids puts the handlers at high risk for contracting avian flu and other viruses.<sup>88</sup> Even spectators are at risk of contracting the virus if they are sprayed with the gamecocks' blood during the match.<sup>89</sup>

Avian flu has not reached American soil yet, but the billion-dollar-a-year American cockfighting industry<sup>90</sup> is a likely avenue for the disease to enter the country.<sup>91</sup> Cockfighting is only legal in Louisiana and New Mexico, but matches regularly occur in several other states.<sup>92</sup> Bans on cockfighting are routinely disregarded because the penalties for violations are so weak.<sup>93</sup> For instance, on June 13, 2005, federal agents raided the Del Rio Cockfighting Pit in Tennessee and arrested 144 participants.<sup>94</sup> David Webb, a gamecock breeder, was one of the people arrested at the Del Rio cockfight.<sup>95</sup> After paying his fifty dollar fine, he reinvested five thousand dollars to replace the gamecocks that

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Alan Sipress, *Bird Flu Adds New Danger to Bloody Game; Cockfighting among Asian Customs That Put Humans at Risk*, Washington Post A16 (Apr. 14, 2005) (available at <http://www.washingtonpost.com/wp-dyn/articles/A51593-2005Apr13.html>) (site no longer available).

<sup>84</sup> *Id.*

<sup>85</sup> L.A. Dept. Health Servs., *Cockfighting*, <http://www.lapublichealth.org/vet/docs/cockfight.pdf> (accessed Mar. 4, 2006).

<sup>86</sup> *Id.*

<sup>87</sup> Sipress, *supra* n. 83.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> L.A. Dept. Health Servs., *supra* n. 85, at <http://www.lapublichealth.org/vet/docs/cockfight.pdf>.

<sup>91</sup> Elton Gallegly, *Smuggling Cockfighting Roosters a Conduit to Bird Flu*, <http://www.house.gov/gallegly/press2005/col121105cockfighting.htm> (Dec. 11, 2005).

<sup>92</sup> L.A. Dept. Health Servs., *supra* n. 85, at <http://www.lapublichealth.org/vet/docs/cockfight.pdf>.

<sup>93</sup> *Id.* Violating the animal fighting provision of the Animal Welfare Act is a federal misdemeanor. *Id.*

<sup>94</sup> CBS News, *144 Arrested at Huge Cockfight*, <http://www.cbsnews.com/stories/2005/06/13/national/main701212.shtml> (June 13, 2005).

<sup>95</sup> Television Interview by John Pless, News Channel 9 WTVC, with David Webb. (Nov. 30, 2005) (available at [http://www.newschannel9.com/engine.pl?station=wtvc&id=2854&template=breakout\\_story1.shtml&dateformat=%25M+%25e,%25Y](http://www.newschannel9.com/engine.pl?station=wtvc&id=2854&template=breakout_story1.shtml&dateformat=%25M+%25e,%25Y)).

were confiscated.<sup>96</sup> When interviewed, Webb stated that the cockfights had been moved to Virginia and would return to Tennessee in the future.<sup>97</sup> Entirely undeterred by the weak laws, gamecock owners often simply smuggle their birds across state and international borders to fight.<sup>98</sup> This transportation greatly increases the risk of an American gamecock contracting avian flu and bringing the virus into the United States.<sup>99</sup>

Representatives Bartlett, Gallegly, and Green sought to protect America from the threat of avian flu by increasing the penalties for cockfighting violations in hope of deterring future disregard of the laws.<sup>100</sup> The Conference Committee not only refused to add the AFPEA language to the Defense Appropriations Bill, but also issued a statement explaining that the bill “[d]oes not include any language nor was any language ever being considered related to cockfighting or animal fighting.”<sup>101</sup> Opponents of the Animal Fighting Prohibition Enforcement Provision stated that it is “a bit of a stretch to say that the animal fighting bill should be an important part of any avian flu efforts.”<sup>102</sup> It is not, however, necessarily a stretch to link cockfighting and disease transmission considering the fact that cockfighting has previously brought devastating diseases into the U.S.<sup>103</sup> For example, in 2003, California declared a state of emergency when illegally transported gamecocks contaminated the state’s entire poultry population with the exotic Newcastle disease.<sup>104</sup>

Advocates for increased penalties for animal fighting violations are continuing to push for this important legislation. This year, the Senate passed S. 382, the Animal Fighting Prohibition Enforcement Act, without amendment and by unanimous consent.<sup>105</sup> A reciprocal

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

<sup>97</sup> *Id.*

<sup>98</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Press Release, U.S. H.R. Comm. Appropriations, *News Room, Highlights of FY06 Defense Appropriations Bill* (June 7, 2005) (available at [http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=577&Month=6&Year=2005](http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=577&Month=6&Year=2005)) (site no longer available).

<sup>102</sup> NewsMax.com, *Cockfighting Bill Aimed at Stopping Bird Flu Spread*, <http://www.newsmax.com/archives/articles/2005/11/7/55529.shtml> (Nov. 7, 2005).

<sup>103</sup> Gallegly, *supra* n. 91, at <http://www.house.gov/gallegly/press2005/col121105cockfighting.htm>.

<sup>104</sup> Press Release, Off. of the Gov., *Governor Davis Declares State of Emergency* (Jan. 8, 2003) (available at [http://www.cdca.ca.gov/ahfss/ah/END\\_Test/pdfs/GovDavEndEmerg.pdf](http://www.cdca.ca.gov/ahfss/ah/END_Test/pdfs/GovDavEndEmerg.pdf)).

<sup>105</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress, S.382*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN00382:@@R> (accessed Feb. 28, 2006) [hereinafter Lib. Cong., *Bill Summary and Status S.382*].

bill in the House, H.R. 817, had more than two hundred sponsors.<sup>106</sup> These bills are endorsed by many organizations including the U.S. Department of Agriculture and the National Chicken Council.<sup>107</sup> At the time of this writing, both bills have been referred to subcommittees and no hearings have been scheduled on either bill.<sup>108</sup>

### b. Arctic Drilling Amendment

Representative Ted Stevens (R-Alaska) introduced an amendment to the Defense Appropriations Bill that would have allowed oil drilling in Alaska's Arctic National Wildlife Refuge (ANWR or "the Refuge").<sup>109</sup> Oil drilling in ANWR has been a hotly debated issue for nearly three decades.<sup>110</sup> President Eisenhower established ANWR in 1960 to preserve the unique wildlife, wilderness, and recreational values of the area.<sup>111</sup> It is the nation's largest wildlife preserve and the "only protected area in the world that includes an intact arctic, subarctic, and boreal ecosystem."<sup>112</sup> This unique ecosystem is vital to the survival of the Refuge wildlife,<sup>113</sup> which includes 36 species of mammals, 180 species of birds, and 36 species of fish.<sup>114</sup>

ANWR also represents North America's highest petroleum potential yet to be explored.<sup>115</sup> Supporters of Representative Stevens's amendment claim the Refuge holds ten billion barrels of oil<sup>116</sup> and believe that drilling the Refuge will decrease U.S. dependence on foreign oil.<sup>117</sup> Opponents of drilling, however, claim that the amount of oil that would be economically feasible to recover would provide only six

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<sup>106</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress, H.R.817*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00817:@@X> (accessed Feb. 28, 2006) [hereinafter Lib. Cong., *Bill Summary and Status H.R.817*].

<sup>107</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>108</sup> Lib. Cong., *Bill Summary and Status H.R.817*, *supra* n. 106, at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00817:@@X>; Lib. Cong., *Bill Summary and Status S.382*, *supra* n. 105, at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00817:@@X>.

<sup>109</sup> Sheryl Gay Stolberg, *A Senator's Bold Ploy on Arctic Drilling*, N.Y. Times A33 (Dec. 21, 2005).

<sup>110</sup> *All Things Considered* (NPR Nov. 10, 2005) (Radio broadcast, transcr. available at <http://www.npr.org/templates/story/story.php?storyId=5007819>).

<sup>111</sup> U.S. Fish & Wildlife Serv.-AK, *Arctic National Wildlife Refuge History Time Line*, <http://arctic.fws.gov/timeline.htm> (updated Feb. 14, 2006).

<sup>112</sup> Defenders of Wildlife, *Help Save the Arctic National Wildlife Refuge, Wildlife Impacts*, <http://www.savearcticrefuge.org/sections/wildimpacts.html> (accessed Feb. 26, 2006).

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

<sup>114</sup> Animal Welfare Inst., *Senate Votes to Allow Drilling in Alaska's Arctic National Wildlife Refuge*, [http://www.awionline.org/pubs/Quarterly/05\\_54\\_2/542p45.htm](http://www.awionline.org/pubs/Quarterly/05_54_2/542p45.htm) (accessed Feb. 26, 2006).

<sup>115</sup> Arctic Power, *The Issue: Which One is the Real ANWR?* <http://www.anwr.org/backgrnd/theissue.htm> (accessed Mar. 7, 2006).

<sup>116</sup> *Id.*

<sup>117</sup> Animal Welfare Inst., *supra* n. 114, at [http://www.awionline.org/pubs/Quarterly/05\\_54\\_2/542p45.htm](http://www.awionline.org/pubs/Quarterly/05_54_2/542p45.htm).

months worth of fuel to the United States.<sup>118</sup> Further, they claim that oil field development, including gravel mines, air and noise pollution, and toxic waste, will pollute and destroy the wildlife's feeding and breeding habitats.<sup>119</sup> Accordingly, opponents assert that such a small amount of oil is not worth destroying "the wildest place left in America."<sup>120</sup>

Because past efforts to pass oil-drilling bills and provisions have been successfully filibustered in the Senate,<sup>121</sup> this year legislators attached their drilling provision to Congress's Budget Resolution, which cannot be filibustered.<sup>122</sup> This tactic proved successful in avoiding a filibuster of a similar pro-drilling provision in 1995; however, Bill Clinton ultimately vetoed that provision.<sup>123</sup> Now, with a pro-drilling President in office, legislators again tried to pass pro-drilling legislation as part of the filibuster-proof Budget Resolution.<sup>124</sup> Much to the legislators' surprise, however, while the Senate passed the Resolution with the pro-drilling provision, the House objected to the inclusion of the provision and stripped it from the final Budget Resolution.<sup>125</sup>

Senator Stevens' amendment to the Defense Appropriations Bill was a last-ditch attempt to pass pro-drilling legislation in 2005.<sup>126</sup> Stevens hoped opponents to drilling would refrain from blocking a bill that financed American troops in Iraq.<sup>127</sup> Many Senators were offended that Stevens would jeopardize the important military spending bill by including his controversial Arctic Drilling Amendment in it.<sup>128</sup> Ultimately, the Senate decided drilling legislation did not belong in a defense appropriations bill and voted down the Amendment thereby saving ANWR and its wildlife from oil drilling for another year.<sup>129</sup>

### *B. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*

On August 10, 2005, President Bush signed into law H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A

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<sup>118</sup> Humane Socy. U.S., *DoD Appropriations Bill*, *supra* n. 6, at [http://www.hsus.org/hsus\\_field/animal\\_fighting\\_the\\_final\\_round/appropriations\\_bill\\_proves\\_hostile.html](http://www.hsus.org/hsus_field/animal_fighting_the_final_round/appropriations_bill_proves_hostile.html).

<sup>119</sup> *Id.* Indeed, a similarly structured Alaskan oil complex, Prudhoe Bay, emits more pollution than Washington D.C. Adam M. Roberts, *Wildlife Refuge or Oil Industry Haven?* 50 *Animal Welfare Inst. Q.2* (Spring 2001)(available at <http://www.awionline.org/pubs/Quarterly/spring2001/anwr.htm>).

<sup>120</sup> Defenders of Wildlife, *Help Save the Arctic National Wildlife Refuge, Learn More*, <http://www.savearcticrefuge.org/learnmore.html> (accessed Mar. 7, 2006).

<sup>121</sup> *All Things Considered*, *supra* n. 110.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*; Stolberg, *supra* n. 109, at A33.

<sup>124</sup> *All Things Considered*, *supra* n. 110.

<sup>125</sup> Stolberg, *supra* n. 109, at A33.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

Legacy for Users (SAFETEA-LU).<sup>130</sup> The Act provides \$286.5 billion of funding for our nation's highways and transit systems through 2009.<sup>131</sup> Although the Act contains some environmentally unsound provisions, it also includes more wildlife protection than any previous highway bill.<sup>132</sup>

One of the most detrimental effects of highways on wildlife is road kill.<sup>133</sup> Wildlife-vehicle collisions are the number one human cause of wildlife mortality<sup>134</sup> and threaten the very existence of some rarer species.<sup>135</sup> Wildlife-vehicle collisions not only cause millions of wildlife deaths each year<sup>136</sup> but also result in hundreds of human deaths and tens of thousands of human injuries.<sup>137</sup>

A large percentage of road kill results from the highways' fragmentation of wildlife habitats.<sup>138</sup> As more roads are built throughout America, the natural habitats of wildlife are being dissected into smaller and smaller areas.<sup>139</sup> Because these areas are often too small to support the needs of the wildlife populations, animals are forced to cross busy highways to find food, shelter, and mates.<sup>140</sup> The drastic effects of habitat fragmentation can be reduced by including wildlife passages in highway designs.<sup>141</sup> Wildlife passages are corridors designed to safely funnel wildlife across or under major highways.<sup>142</sup> The passages shield the noise of the highway and are made from specific materials designed to entice animal use.<sup>143</sup> SAFETEA-LU contains three provisions that increase the funds available for wildlife passage development.<sup>144</sup>

First, section 1119(m)(3) of the Act provides \$10 million per year to improve fish passages under forest roads.<sup>145</sup> Current structures channel the water creating strong currents that some fish cannot swim

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<sup>130</sup> Pub. L. No. 109-59, 119 Stat. 1144 (2005).

<sup>131</sup> *Id.* at 1153-57.

<sup>132</sup> Defenders of Wildlife, *SAFETEA-LU: Conservation Provisions of Interest: Analysis of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for User and its Impacts for America's Wildlife* 1, <http://www.defenders.org/habitat/highways/safetea/safetea.pdf> (accessed Feb. 28, 2006).

<sup>133</sup> Patricia A. White & Michelle Ernst, *Second Nature: Improving Transportation without Putting Nature Second* 3 (Defenders of Wildlife) (available at [http://www.transact.org/library/reports\\_pdfs/Biodiversity/second\\_nature.pdf](http://www.transact.org/library/reports_pdfs/Biodiversity/second_nature.pdf)) (accessed Feb. 28, 2006).

<sup>134</sup> *Id.* at 4.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 3.

<sup>137</sup> *Id.* at 5.

<sup>138</sup> *Id.* at 3.

<sup>139</sup> White & Ernst, *supra* n. 133, at 5.

<sup>140</sup> *Id.*

<sup>141</sup> Humane Socy. U.S., *Wildlife Crossings—Wild Animals and Roads*, [http://www.hsus.org/wildlife/issues\\_facing\\_wildlife/wildlife\\_crossings\\_wild\\_animals\\_and\\_roads/](http://www.hsus.org/wildlife/issues_facing_wildlife/wildlife_crossings_wild_animals_and_roads/) (accessed Mar. 5, 2006).

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

<sup>143</sup> *Id.*

<sup>144</sup> 119 Stat. at 1171-72, 1190, 1221.

<sup>145</sup> *Id.* at 1190.

against.<sup>146</sup> Improving these passages is particularly important for anadromous fish that need to enter river systems to breed.<sup>147</sup> Second, section 1113 of the Act increases funding for Transportation Enhancement (TE) activities,<sup>148</sup> which are “federally funded, community-based projects that expand travel choices and enhance the transportation experience by improving the cultural, historic, aesthetic and environmental aspects of our transportation infrastructure.”<sup>149</sup> TE funds are only used on projects that include one of the twelve activities listed in United States Code title 23, section 101(a)(35).<sup>150</sup> Activity number eleven allows funding for construction of wildlife passages.<sup>151</sup> Finally, section 1401(3)(B) of the Act opens up funding sources previously unavailable for wildlife passage construction by expanding the definition of “Highway Safety Improvement Project” to include the addition of structures or other means to eliminate vehicle-caused wildlife collisions.<sup>152</sup>

SAFETEA-LU also calls for the Secretary of Transportation to conduct a major study on the causes of wildlife vehicle collisions and methods to reduce the number of collisions.<sup>153</sup> The study will create a blueprint for a best practices manual to be used to train transportation professionals and will hopefully significantly decrease vehicle-caused animal mortalities.<sup>154</sup>

Wildlife-vehicle collisions are not the only harm caused by highways and transit systems.<sup>155</sup> Major highways also create incredible amounts of air, soil, water, and noise pollution that cause a myriad of problems for animals.<sup>156</sup> In the past, highways were planned, funded, and designed before any impact studies were completed.<sup>157</sup> Any environmental concerns were addressed in hindsight.<sup>158</sup> SAFETEA-LU

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<sup>146</sup> Defenders of Wildlife, *supra* n. 132, at 5.

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

<sup>148</sup> 119 Stat. at 1171-72.

<sup>149</sup> Natl. Transp. Enhancements Clearinghouse, *TE Basics*, [http://www.enhancements.org/TE\\_basics.asp](http://www.enhancements.org/TE_basics.asp) (accessed Feb. 28, 2006).

<sup>150</sup> U.S. Dept. of Transp., *Transportation Enhancement Activities*, <http://www.fhwa.dot.gov/environment/te/teas.htm> (accessed Feb. 28, 2006).

<sup>151</sup> *Id.*

<sup>152</sup> 119 Stat. at 1221.

<sup>153</sup> *Id.* at 1190.

<sup>154</sup> Defenders of Wildlife, *supra* n. 132, at 2-3.

<sup>155</sup> White & Ernst, *supra* n. 133, at 6. For example, vehicles inundate the surrounding habitats with air pollutants such as carbon monoxide, nitrogen oxides, and hydrocarbons that cause a variety of environmental problems including smog, ozone formation, and acid rain. *Id.* at 7. Vehicles also emit heavy metals such as zinc, cadmium, nickel, and lead, which seep into the earth and contaminate animals' food sources. *Id.* Studies on animals living close to highways have found lead concentration levels high enough to cause death or reproductive problems. *Id.* Highway noise pollution also affects wildlife and can cause changes in animal behavior, particularly in species that use auditory signals. *Id.* at 9.

<sup>156</sup> *Id.* at 6-9.

<sup>157</sup> Defenders of Wildlife, *supra* n. 132, at 14, 45.

<sup>158</sup> White & Ernst, *supra* n. 133, at 14.

will increase development of animal-friendly highways by requiring future projects to include a comprehensive study of the impacts on wildlife and the environment during the planning phase.<sup>159</sup>

Many animal rights groups, including HSUS and the Defenders of Wildlife, applaud the wildlife-friendly provisions in SAFETEA-LU.<sup>160</sup> They recognize that while the Act includes some less than ideal environmental effects, it also marks an important step toward considering wildlife in the future development of American roadways.<sup>161</sup>

### C. *The Pets Evacuation and Transportation Standards Act*

On September 22, 2005, Representatives Tom Lantos (D-CA) and Christopher Shays (R-CT) introduced H.R. 3858, the Pets Evacuation and Transportation Standards (PETS) Act.<sup>162</sup> Presently, state and local authorities must present a disaster preparedness plan to qualify for Federal Emergency Management Agency (FEMA) funding.<sup>163</sup> The PETS Act would require authorities to extend their plans to include arrangements for pets and companion animals during disasters.<sup>164</sup>

Planning for the welfare of animals and pets during disasters will alleviate needless animal and human suffering during disasters while increasing public safety.<sup>165</sup> During Hurricane Katrina, evacuees were forced to abandon their pets to save themselves because neither rescuers nor shelters had made arrangements for animals.<sup>166</sup> Because many people consider their pets family members, this heart-wrenching decision created yet another source of emotional distress for the already devastated evacuees.<sup>167</sup> In fact, many Gulf Coast residents refused to evacuate and leave their pets behind, thereby placing themselves in grave danger.<sup>168</sup> The PETS Act would put an end to this no-win situa-

<sup>159</sup> 119 Stat. at 1838.

<sup>160</sup> See Defenders of Wildlife, *supra* n. 132, at 1 (recognizing that SAFETEA-LU contains "some important, and historic, milestones for America's wildlife"); Humane Socy. U.S., *A Daylight Savings Reminder: The HSUS Reminds Drivers to Give Wildlife a Brake!* [http://www.hsus.org/press\\_and\\_publications/press\\_releases/a\\_daylight\\_savings\\_reminder\\_the\\_hsus\\_reminds\\_drivers\\_to\\_give\\_wildlife\\_a\\_brake.html](http://www.hsus.org/press_and_publications/press_releases/a_daylight_savings_reminder_the_hsus_reminds_drivers_to_give_wildlife_a_brake.html) (Oct. 24, 2005) (applauding wildlife-friendly provisions in SAFETEA-LU).

<sup>161</sup> Defenders of Wildlife, *supra* n. 132, at 1.

<sup>162</sup> H.R. 3858, 109th Cong. (Sept. 22, 2005); see generally Christopher Shays, *Animal Welfare: Its Place in Legislation* 12 *Animal L.* 1, 1-2 (2005) (discussing H.R. 3858 and why the legislation is needed).

<sup>163</sup> Press Release, Congressman Tom Lantos, *Lantos Legislation Will Ensure That in Future Disasters, People Will Not be Forced to Abandon Household Pets* ¶ 2 (Sept. 22, 2005) (available at [http://lantos.house.gov/HoR/CA12/Newsroom/Press+Releases/2005/PR\\_050922\\_Katrina\\_PETSBill.htm](http://lantos.house.gov/HoR/CA12/Newsroom/Press+Releases/2005/PR_050922_Katrina_PETSBill.htm)).

<sup>164</sup> H.R. 3858, 109th Cong.

<sup>165</sup> *Id.*

<sup>166</sup> Gina Spadafori, *Including Pets in Evacuation Plans Could Save Human Lives*, *Boston Globe C6* (Oct. 13, 2005) (available at [http://www.boston.com/yourlife/home/articles/2005/10/13/including\\_pets\\_in\\_evacuation\\_plans\\_could\\_save\\_human\\_lives/](http://www.boston.com/yourlife/home/articles/2005/10/13/including_pets_in_evacuation_plans_could_save_human_lives/)).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*



tion by requiring authorities to consider pets and companion animals in their disaster preparedness plans.<sup>169</sup>

After being introduced to the House, the bill was referred to the Subcommittee on Economic Development, Public Buildings and Emergency Management.<sup>170</sup> At the time of this writing, the bill has eighty-four co-sponsors and no hearing has been scheduled on it.<sup>171</sup>

## II. STATE LEGISLATION

### A. *Hunting*

#### 1. *Internet Hunting*

In late January 2005, John Lockwood helped a friend become the first person to hunt via the internet through Lockwood's website, Live-Shot.com.<sup>172</sup> This triggered a great deal of legislative debate in the 2005 session regarding the issue of internet hunting. Internet hunting, or remote-control hunting, allows a person with an internet connection to use his or her computer to aim and fire a weapon, which has been strategically placed in a game ranch to shoot and kill exotic animals at close range.<sup>173</sup> Someone at the ranch loads and positions the gun at a location where the animal is lured and shot through the click of a mouse.<sup>174</sup> "At its peak, Lockwood's [website] had 350 members," all paying him a monthly fee for his "service."<sup>175</sup> However, the website also managed to draw the attention of groups opposed to the practice, including legislatures, hunting advocacy groups, and animal advocacy groups.<sup>176</sup>

Texas, where Lockwood's ranch was located, was the first state to respond to the website by proposing legislation to ban the practice.<sup>177</sup>

<sup>169</sup> Press Release, Congressman Lantos, *supra* n. 163.

<sup>170</sup> Lib. Cong., *Bill Summary and Status for the 109th Congress*, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR03858:@@X> (accessed Feb. 28, 2006).

<sup>171</sup> *Id.*

<sup>172</sup> Humane Socy. U.S., *The Latest Fad in Internet Animal Cruelty: Pay-Per-View Hunting*, [http://www.hsus.org/wildlife/wildlife\\_news/pay\\_per\\_view\\_slaughter.html](http://www.hsus.org/wildlife/wildlife_news/pay_per_view_slaughter.html) (Apr. 8, 2005) [hereinafter Humane Socy. U.S., *Pay-Per-View Hunting*].

<sup>173</sup> Humane Socy. U.S., *Internet Hunting: Where Does Your State Stand?* [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/internet\\_hunting\\_state\\_laws.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/internet_hunting_state_laws.html) (accessed Mar. 13, 2006).

<sup>174</sup> *Id.* ("The animal is lured to a feeding station within range of the mounted rifle."); Aili McConnon, *Cyber Hunting: Just Click and Shoot, For Real*, <http://www.azcentral.com/ent/pop/articles/1207cyberhunt1207-CR.html> (Dec. 6, 2005) ("A guide would be on site to load the gun (hooked up to a computer system), ensure its safety and make sure the animal was killed quickly if it was wounded.").

<sup>175</sup> McConnon, *supra* n. 174, at <http://www.azcentral.com/ent/pop/articles/1207cyberhunt1207-CR.html>.

<sup>176</sup> *Id.* (Organizations such as the National Humane Society [The Humane Society of the United States], National Rifle Association, and the Safari Club quickly spoke out against the website and lobbied legislatures to ban internet hunting.)

<sup>177</sup> Humane Socy. U.S., *Internet Hunting Bills 2005*, [http://www.hsus.org/web-files/PDF/Internethunting\\_StateLaws\\_2005.pdf](http://www.hsus.org/web-files/PDF/Internethunting_StateLaws_2005.pdf) (updated Nov. 3, 2005) [hereinafter Humane Socy. U.S., *Internet Hunting Bills 2005*]; see also Humane Socy. U.S., *Pay-Per-*

Representative Todd Smith sponsored House Bill 2026, which was signed into law on June 20, 2005, to prohibit computer-assisted remote hunting of animals.<sup>178</sup> Other states followed Texas's lead, and by November 3, 2005 thirteen states had signed bills into law banning some form of internet hunting.<sup>179</sup> The language of the statutes varied as to how the states defined internet hunting, the specific practices the states prohibited, and the types of animals that could not be targeted. Michigan and Virginia, for example, adopted the language of the Texas law, prohibiting a person from engaging in or operating a facility that practiced "computer-assisted remote hunting," which the statutes define as the use of a computer or other device to remotely control a hunting weapon to kill an animal.<sup>180</sup> California and New York prohibit both the use of remote-control hunting devices via an internet connection and the operation of a facility that practices the "online shooting or spearing" of an animal within the state.<sup>181</sup> California additionally prohibits the possession, importation, or exportation of a "bird or mammal" in furtherance of these illegal acts.<sup>182</sup> Minnesota, North Carolina, Pennsylvania, and Virginia passed legislation that prohibits the use or facilitation of computer-assisted remote hunting where the hunter is not physically present at the location of the weapon used to kill the animal.<sup>183</sup> These states specifically identify "wild animals" as the target of the prohibited activity.<sup>184</sup> Virginia would also require the immediate revocation of a hunting license for three to five years upon a conviction for remote hunting.<sup>185</sup>

The remaining four states that passed internet hunting laws in the 2005 session differed more significantly in how the laws barred internet hunting. For example, Maine's statute prohibits any "com-

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*View Hunting*, *supra* n. 172, at [http://www.hsus.org/wildlife/wildlife\\_news/pay\\_per\\_view\\_slaughter.html](http://www.hsus.org/wildlife/wildlife_news/pay_per_view_slaughter.html) (Virginia followed suit behind Texas when bills banning internet hunting were signed by the governor.); Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, Virginia*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=VA](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=VA) (accessed Mar. 13, 2006) (Virginia Governor Mark Warner signing both House Bill 2273, sponsored by Delegate Glenn Oder (R), and Senate Bill 1083, sponsored by Senator Patricia Ticer (D), into law on March 20, 2005).

<sup>178</sup> Humane Socy. U.S., *Pay-Per-View Hunting*, *supra* n. 172, at [http://www.hsus.org/wildlife/wildlife\\_news/pay\\_per\\_view\\_slaughter.html](http://www.hsus.org/wildlife/wildlife_news/pay_per_view_slaughter.html).

<sup>179</sup> Humane Socy. U.S., *Internet Hunting Bills 2005*, *supra* n. 177, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/internet\\_hunting\\_state\\_laws.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/internet_hunting_state_laws.html).

<sup>180</sup> Mich. Comp. Laws Ann. § 750.236a(1)–(2) (Westlaw current through P.A. 2006, No. 1-25) (defining the term as "computer-assisted shooting"); Tenn. Code Ann. §§ 70-4-501 to 70-4-502 (Supp. 2006); Tex. Parks & Wildlife Code Ann. § 60.002(a)–(c) (Supp. 2006).

<sup>181</sup> Cal. Fish & Game Code Ann. § 3003(a)–(b) (West Supp. 2006); N.Y. Envtl. Conservation L. § 11-1906(1)–(2) (McKinney current through L. 2006, chs. 1–6, 8).

<sup>182</sup> Cal. Fish & Game Code Ann. § 3003(c)–(d).

<sup>183</sup> Minn. Stat. § 97B.115 (Supp. 2006); N.C. Gen. Stat. § 113-291.1A (Supp. 2006); 18 Pa. Consol. Stat. Ann. § 7641 (Westlaw current through Act 2005-96 (End)); Va. Code Ann. § 29.1-530.3 (Supp. 2006).

<sup>184</sup> Minn. Stat. § 97B.115; N.C. Gen. Stat. § 113-291.1A; 18 Pa. Consol. Stat. § 7641; Va. Code Ann. § 29.1-530.3.

<sup>185</sup> Va. Code Ann. § 29.1-530.3(B).

mercial large game shooting area” from operating a “website or a service or business . . . to shoot . . . any large game . . . in this state through the use of a . . . remote-control device when the [hunter] . . . is physically removed from the immediate vicinity of the . . . animal.”<sup>186</sup> The statute, unlike other states’ internet hunting laws, does not prohibit a person from *using* the website. West Virginia prohibits a person from hunting unless the person is in physical proximity to the wildlife.<sup>187</sup> Similarly, Wisconsin passed a law that requires physical possession of the weapon to legally shoot a farm-raised deer or a wild animal.<sup>188</sup> Furthermore, Wisconsin facilities that allow a person to hunt farm-raised deer or wild animals are responsible for requiring that the hunter be in physical possession of the weapon.<sup>189</sup>

Finally, Vermont passed a statute that barred “remote-control hunting” with language similar to the Texas statute.<sup>190</sup> The Vermont statute prohibits a person from using a remote-control hunting device and from operating a remote-control hunting site in the state.<sup>191</sup> Additionally, Vermont followed California in prohibiting the possession, importation, or exportation of an animal for the purpose of remote-control hunting.<sup>192</sup> But, unlike the other internet hunting laws passed in 2005, Vermont passed an exception to the bar against remote-control hunting for persons “physically impaired” such that the person cannot otherwise hunt in accordance with the restrictions.<sup>193</sup> Of the thirteen states that passed internet hunting legislation, only Vermont has included this type of exception.

## 2. *Right to Hunt*

Although hunting is legal in most states, there is a movement to amend state constitutions to include a “right to hunt.”<sup>194</sup> For many hunters, the movement is a response to the perceived threat from animal rights organizations.<sup>195</sup> Pro-hunting groups like the U.S.

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<sup>186</sup> 7 Me. Rev. Stat. Ann. § 1347 (Supp. 2005).

<sup>187</sup> W. Va. Code § 20-2-5(1) (Supp. 2005) (The West Virginia statute makes it unlawful for a person to “[s]hoot at or to shoot any wild bird or animal unless it is plainly visible to him or her.”); see also Humane Socy. U.S., *Internet Hunting Bills 2005*, *supra* n. 177, at [http://www.hsus.org/legislation\\_laws/citizen\\_lobbyist\\_center/internet\\_hunting\\_state\\_laws.html](http://www.hsus.org/legislation_laws/citizen_lobbyist_center/internet_hunting_state_laws.html) (summarizing multiple state laws).

<sup>188</sup> Wis. Stat. Ann. § 95.55(5)(bn) (Westlaw current through 2005 Act 60, published 12/30/05) (regarding farm-raised deer); Wis. Stat. Ann. § 169.09(1m) (Westlaw current through 2005 Act 60, published 12/30/05) (regarding captive wild animals).

<sup>189</sup> Wis. Stat. Ann. §§ 95.55(bn), 169.09(1m).

<sup>190</sup> Vt. Stat. Ann. tit. 10, § 4715(a)–(c) (Supp. 2005).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at § 4715(d).

<sup>193</sup> *Id.* at § 4715(e) (The person has to apply for the permit and submit “certification from a licensed physician describing the person’s limitations.”).

<sup>194</sup> St. Env’tl. Resource Ctr., *Issue: “Right to Hunt and Fish” Laws*, <http://www.serconline.org/huntandfish.html> (accessed Mar. 13, 2006).

<sup>195</sup> Patrik Jonsson, *‘Right to Hunt’ vs. Animal Rights: What’s Fair Game?* *Christian Sci. Monitor* (Apr. 3, 2002) (available at <http://www.csmonitor.com/2002/0403/p01s04-ussc.html>).

Sportsmen's Alliance have lobbied for legislative and constitutional provisions to protect "our heritage" of hunting, trapping, and fishing.<sup>196</sup> It is no surprise then that in the 2005 legislative session, several states passed legislation to promote or guarantee the right to hunt, fish, and trap by amending their state constitutions, imposing a duty on a state agency to focus on hunting, or strengthening a perceived gap in a pro-hunting constitutional amendment. However, it should be noted that the impact of this legislation is unclear, and both pro-hunting groups and animal rights organizations are unsure about the strength of the legislation.<sup>197</sup>

*a. Georgia and Indiana*

In the 2005 legislative session, legislation was introduced in Georgia and Indiana that would amend the state constitutions to include a right to hunt and fish.<sup>198</sup> Both resolutions easily passed in the state legislatures.<sup>199</sup> Georgia Senate Resolution 67 may be ratified in the upcoming 2006 election.<sup>200</sup> Indiana House Resolution 4, on the other hand, must be passed by a second general assembly before it will be placed on a ballot for ratification.<sup>201</sup> In both states, sponsors of the bills argued that the right to hunt and fish were under attack and this legislation was necessary to protect this "historic right."<sup>202</sup> The legisla-

<sup>196</sup> James A. Swan, *The Right to Hunt*, <http://www.nationalreview.com/swan/swan111902.asp> (Nov. 19, 2002, 9:35 a.m.).

<sup>197</sup> St. Env'tl. Resource Ctr., *supra* n. 194, at <http://www.serconline.org/huntandfish.html> (discussing whether the right-to-hunt legislation may interfere with pro-animal and environmental laws and regulations); Swan, *supra* n. 196, at <http://www.nationalreview.com/swan/swan111902.asp> (discussing how Rick Story, vice president of the U.S. Sportsmen's Alliance, questions the effectiveness of the constitutional amendments).

<sup>198</sup> Ga. S. Res. 67, 148th Gen. Assembly, 2005–2006 Reg. Sess. (May 9, 2005); Ind. H. Jt. Res. 4, 114th Gen. Assembly, 1st Reg. Sess. (Jan. 4, 2005).

<sup>199</sup> Nancy Badertscher, *Georgia Beat: A Blog as Local as the Politics, Hunting and Fishing Amendment to Appear on Ballot*, [http://www.ajc.com/metro/content/custom/blogs/georgia/entries/2005/03/17/hunting\\_and\\_fishing\\_amendment\\_to\\_appear\\_on\\_ballot.html](http://www.ajc.com/metro/content/custom/blogs/georgia/entries/2005/03/17/hunting_and_fishing_amendment_to_appear_on_ballot.html) (Mar. 17, 2005, 12:54 p.m.) (The Senate President Pro Tem Eric Johnson (R) sponsored Senate Resolution 67, which passed unanimously in the Georgia House.); Mary Lee Pappas, *Animal Welfare Legislation, Trapping Could Be Added to Constitution*, NUVO (Mar. 30, 2005) (available at [http://www.nuvo.net/archive/2005/03/30/animal\\_welfare\\_legislation.html](http://www.nuvo.net/archive/2005/03/30/animal_welfare_legislation.html)) (The Indiana Senate passed House Resolution 4, sponsored by John Ulmer (R)).

<sup>200</sup> Badertscher, *supra* n. 199, at [http://www.ajc.com/metro/content/custom/blogs/georgia/entries/2005/03/17/hunting\\_and\\_fishing\\_amendment\\_to\\_appear\\_on\\_ballot.html](http://www.ajc.com/metro/content/custom/blogs/georgia/entries/2005/03/17/hunting_and_fishing_amendment_to_appear_on_ballot.html).

<sup>201</sup> See Ind. Gen. Assembly, *Bill Drafting Manual*, <http://www.in.gov/legislative/session/manual/chap04/index.html#jointresolutions> (accessed Mar. 14, 2006) (requiring that constitutional amendments "must be agreed upon by two separately elected general assemblies").

<sup>202</sup> Jim Stinson, *Amendments to Constitution Worthy of Some Extra Watching*, Gary Post-Tribune A3 (Jan. 24, 2005) (Representative John Ulmer argued that "anti-hunting groups and the Humane Society" were attacking the right to hunt.); Badertscher, *supra* n. 199, at <http://www.ajc.com/metro/content/custom/blogs/georgia/entries/2005/03/17/>

tion is also viewed as being essential because of the importance of hunting and fishing both to the states' economies and as a traditional and popular pastime.<sup>203</sup> Both bills amend the state constitutions to grant an explicit right to hunt to the citizens of the state.<sup>204</sup>

### b. *Alaska and Maryland*

The Alaska legislature enacted House Bill 75 to promote "sport hunting" in the state by amending the Fish and Game Code.<sup>205</sup> The enacted legislation places on the Commissioner of Fish and Game a duty to "promote fishing, hunting, and trapping and preserve the heritage of fishing, hunting and trapping in the state."<sup>206</sup> In Maryland, Delegate Michael Weir (D) sponsored House Bill 1086 and Governor Ehrlich signed it into law on May 10, 2005.<sup>207</sup> The enacted legislation requires the Department of Natural Resources to keep lands managed by the Department open for hunting activities unless they must be closed "for reasons of public safety, fish or wildlife management, or homeland security, or as otherwise required by law."<sup>208</sup> The law further requires the Department to manage state lands in a manner that ensures no net loss of land open to hunting<sup>209</sup> and, in general, to conduct its management activities in such a way as to promote hunting.<sup>210</sup> The bases for these imposed duties are the findings of the General Assembly regarding the importance of hunting and hunters to the state.<sup>211</sup>

### c. *Montana*

In a recent lawsuit, a district judge issued a permanent injunction against all forms of hunting on particular private lands because a

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hunting\_and\_fishing\_amendment\_to\_appear\_on\_ballot.html (Senate President Pro Tem Eric Johnson stated that "[t]here are activist judges and future legislatures . . . that could restrict our heritage and our historic right to hunting and fishing.").

<sup>203</sup> See Ga. H. Daily Rpt. No. 8, 147th Gen. Assembly, 2004 Reg. Sess. (2004) (stating that the legislation's authors pointed to the \$170 million annually generated by hunting and fishing and "the fact that the traditions of hunting and fishing are much a part of this state as Georgia red clay"); Craig Rimlinger, *Codifying Right to Hunt Lawmakers Push Changes to State Constitutions*, Fort Wayne J. Gazette 11 (Dec. 5, 2004) (available at 2004 WLNR 13580026) (describing hunting as "an institution in the Midwest" and citing a 2001 study indicating that Indiana received \$846 million from hunting).

<sup>204</sup> Ga. Sen. Res. 67, 148th Gen. Assembly, 2005-2006 Reg. Sess. (May 9, 2005); Ind. H. Jt. Res. 4, 114th Gen. Assembly, 1st Reg. Sess. (Mar. 29, 2005).

<sup>205</sup> Alaska H. 75, 24th Legis., 1st Sess. § 1 (Jan. 18, 2005).

<sup>206</sup> Alaska Stat. § 16.05.050(a)(19) (Supp. 2005).

<sup>207</sup> Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, Maryland*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=MD](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=MD) (accessed Mar. 14, 2006).

<sup>208</sup> Md. Nat. Resources Code Ann. § 10-212(b)(1) (Supp. 2005).

<sup>209</sup> *Id.* at § 10-212(b)(3).

<sup>210</sup> *Id.* at § 10-212(b)(2).

<sup>211</sup> *Id.* at § 10-212(a) (listing reasons for the importance of hunting).

neighbor feared for his safety due to the increased hunting.<sup>212</sup> The decision in the case brought into question Montana's constitutional right to hunt.<sup>213</sup> In response to the ruling, the Montana legislature proposed House Bill 225 to protect hunting on private property.<sup>214</sup> The enacted legislation allows the owner of land to hunt on his private property as long as the hunting does not violate any state laws or regulations.<sup>215</sup> The need for this legislation in Montana raises many questions about the significance and extent of these hunting rights amendments once they have been passed. Rick Story, vice president of U.S. Sportsmen's Alliance, has stated that many of the state constitutional amendments include language that could leave hunting vulnerable to being restricted through regulations.<sup>216</sup>

### B. *Animal and Ecological Terrorism Legislation*

In the aftermath of September 11, 2001, anti-terrorism measures have been implemented at both the state and federal levels.<sup>217</sup> In this politically tense climate, two organizations have pushed model legislation that targets animal rights and ecological terrorist organizations.<sup>218</sup> The American Legislative Exchange Council (ALEC) and the U.S. Sportsmen's Alliance (USSA) drafted the Animal and Ecological Terrorist Act (AETA) as a model to be used by states to write and pass legislation targeting animal and ecological terrorism.<sup>219</sup> Although ALEC and the USSA argue that the AETA primarily targets allegedly violent groups such as the Animal Liberation Front (ALF), the AETA has a broad definition of animal or ecological terrorist organization: "any association, organization, entity, coalition, or combination of two or more persons with the . . . primary or incidental purpose of supporting any . . . activity through intimidation, coercion, force, or fear that is intended to obstruct, impede, or deter any person from participating in

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<sup>212</sup> Gordy Megroz, *Outside Online, Today's Top Stories, Tom Brokaw Wins Injunction against Hunting around His Montana Ranch*, [http://outside.away.com/outside/news/20041110\\_1.html](http://outside.away.com/outside/news/20041110_1.html) (Nov. 10, 2004).

<sup>213</sup> Mont. Const. art. IX, § 7; Mark Henckel, *Montana Outdoors: Brokaw Dispute Poses Tough Questions*, Billings Gazette (Montana) (Nov. 24, 2004) (available at <http://www.billingsgazette.com/newdex.php?display=rednews/2004/11/25/build/outdoors/35-mt-outdoors.inc>) (questioning the rights of a landowner to hunt within his property).

<sup>214</sup> Gary Marbut, *Mont. Shooting Sports Assn., News, Two Bills up Thursday*, [http://www.mtssa.org/legisupdates.phtml?legupdate\\_id=59](http://www.mtssa.org/legisupdates.phtml?legupdate_id=59) (Jan. 11, 2005).

<sup>215</sup> Mont. Code Ann. § 87-2-121 (2005).

<sup>216</sup> Swan, *supra* n. 196, at <http://www.nationalreview.com/swan/swan111902.asp>.

<sup>217</sup> Michael Satchell, *Legal Concerns: ALEC Looks to Turn Animal Activists into Domestic Terrorists*, [http://www.hsus.org/about\\_us/about\\_hsus\\_programs\\_and\\_services/eye\\_on\\_the\\_opposition/legal\\_concerns\\_alec\\_looks\\_to\\_turn\\_animal\\_activists\\_into\\_domestic\\_terrorists.html](http://www.hsus.org/about_us/about_hsus_programs_and_services/eye_on_the_opposition/legal_concerns_alec_looks_to_turn_animal_activists_into_domestic_terrorists.html) (accessed Mar. 14, 2006).

<sup>218</sup> *Id.*

<sup>219</sup> U.S. Sportsmen's Alliance, *Legislators' Association Gives Nod to Model Terrorism Bill*, <http://www.wlfa.org/interactive/features/Read.cfm?ID=1006> (accessed Mar. 14, 2006).

a lawful animal activity, animal facility, [or] research facility . . . .”<sup>220</sup> This definition may be interpreted to include animal rights organizations that use peaceful, legal, non-violent methods.<sup>221</sup> The language of the AETA could be construed to include activities such as signing petitions, protesting, and holding demonstrations.<sup>222</sup> In the 2005 legislative session, Arizona, Ohio, and Pennsylvania followed the AETA model to introduce legislation adding the definition of animal and ecological terrorism to their statutes.<sup>223</sup>

### 1. Arizona

Governor Janet Napolitano signed Senate Bill 1166, sponsored by Senator Thayer Verschoor (R), into law on May 20, 2005.<sup>224</sup> The new legislation “defines ‘animal terrorism’ or ‘ecological terrorism’ as a form of racketeering . . . .”<sup>225</sup> However, the statutory language was limited from its original scope because Governor Napolitano had vetoed a previous bill with broader language.<sup>226</sup> The statute covers acts by “three persons acting in concert” to inflict damage to property greater than ten thousand dollars with the use of a deadly weapon or the intent to cause physical harm to a person.<sup>227</sup> Perhaps due to Governor Napolitano’s resistance to the earlier drafts, the Arizona ecological terrorism bill is not as broad as the AETA model legislation or the bills introduced in both the Ohio and Pennsylvania legislatures.

### 2. Ohio

Ohio Senate Bill 9, sponsored by Senator Jeff Jacobson (R), was signed into law on January 11, 2006.<sup>228</sup> The enacted legislation adds the definition of animal or ecological terrorism to the state’s criminal

<sup>220</sup> U.S. Sportsmen’s Alliance, *The Animal and Ecological Terrorism Act*, <http://www.wlfa.org/interactive/features/Read.cfm?ID=1129> (accessed Mar. 14, 2006).

<sup>221</sup> Ginger A. Otis, *State Law Would Pin the T-Word on Animal Rights and Eco Protesters*, *Village Voice* (Nov. 12–18, 2003) (available at [http://www.refuseandresist.org/police\\_state/art.php?aid=1134](http://www.refuseandresist.org/police_state/art.php?aid=1134)).

<sup>222</sup> St. Env’tl. Resource Ctr., *Watchdog Alert, Terrorism Bill Used to Attack Civic Activism*, <http://www.serconline.org/watchdog/watchdog2003/watchdog29.html> (accessed Mar. 14, 2006).

<sup>223</sup> U.S. Sportsmen’s Alliance, *Lawmakers Nationwide Open Eyes to Dangers of Eco-Terrorism*, <http://www.wlfa.org/interactive/features/Read.cfm?ID=1634> (accessed Mar. 14, 2006).

<sup>224</sup> Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, Pennsylvania*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&state=PA](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&state=PA) (accessed Mar. 14, 2006).

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

<sup>226</sup> *Legislative Briefing: Ecoterrorism*, 2004 *Ariz. Daily Star* (May 13, 2004) (available at <http://www.azstarnet.com/sn/preps/21884.php>) (Governor Napolitano vetoed Senate Bill 1081 describing the bill as “overbroad, unnecessary and susceptible to a host of unintended negative consequences.”).

<sup>227</sup> *Ariz. Rev. Stat. § 13-2301(C)(3)* (2005).

<sup>228</sup> Humane Socy. U.S., *OH S.B. 9 Animal Terrorism*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/ohio/oh\\_sb\\_9\\_animal\\_terrorism.html](http://www.hsus.org/legislation_laws/state_legislation/ohio/oh_sb_9_animal_terrorism.html) (accessed Mar. 14, 2006).

code.<sup>229</sup> Under the new law, an act of animal or ecological terrorism is one that causes a substantial risk of physical harm to property, involves use of a deadly weapon, or is an act causing serious physical harm to property.<sup>230</sup> Additionally, actions that impede a person from using an animal research facility, conducting research on animals, or hunting may now be considered terrorist acts.<sup>231</sup> Senator Jacobson argued that the legislation will prevent attacks on “lawful animal activities” such as food processing and farming.<sup>232</sup> However, animal rights groups fear that the bill will interfere with many lawful activities, such as peaceful demonstrations or investigations into animal cruelty.<sup>233</sup>

### 3. *Pennsylvania*

The legislation proposed in Pennsylvania to increase penalties for acts of ecological and animal terrorism is similar to the language in the new Ohio law.<sup>234</sup> House Bill 213 has currently passed the Pennsylvania House and is pending in the state’s Senate.<sup>235</sup> If enacted, a person would be guilty of “ecoterrorism” if that person intimidated or obstructed an individual participating in an “activity involving animals” or “using an animal . . . facility.”<sup>236</sup> Anyone convicted under this section could be fined or imprisoned and may owe restitution up to three times the damage assessed.<sup>237</sup> However, the bill also explicitly grants immunity for a person who “exercises the right of petition or free speech” under the United States and Pennsylvania Constitutions.<sup>238</sup> But there is concern that, even with this exception, animal rights organizations may be hindered in engaging in legitimate, peaceful activities.<sup>239</sup>

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<sup>229</sup> 2005 Ohio Laws File 61 (available in Westlaw at Ohio 2005 Sess. Law Serv. 126th Gen. Assembly).

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Carrie Spencer, *Terrorism Bill Would Stiffen Penalties for Animal Rights Threats*, Akron Beacon J. (Ohio) (Mar. 29, 2005) (available at <http://www.freerepublic.com/focus/f-news/1374040/posts>).

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Am. Socy. Prevention Cruelty Animals, *supra* n. 224, at [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=PA](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=PA).

<sup>236</sup> Pa. H. 213, 189th Gen. Assembly, 2005–2006 Reg. Sess. § 2 (Feb. 2, 2005).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> See *e.g.* Am. Socy. Prevention Cruelty Animals, *supra* n. 224, at [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=PA](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=PA) (“[The bill] does not define terms such as ‘intimidate,’ ‘coerce,’ or ‘obstruct,’ thus giving insufficient notice of what behavior would be deserving of more severe punishment.”).



### C. Factory Farms

Factory farms, or Concentrated Animal Feeding Operations (CAFOs), are large scale, industrial livestock operations.<sup>240</sup> Factory farms emphasize high volume production at the expense of “human health, safe food, the environment, humane treatment of animals, and the rural economy.”<sup>241</sup> In response to the negative impact of factory farms, the public has begun taking measures to regulate or restrict factory farms near their communities.<sup>242</sup> In the past year, state legislatures introduced legislation addressing two growing concerns regarding factory farms: the impact of antibiotic use on animals and the confinement of animals. Additionally, legislation was introduced to both increase and limit the regulation of factory farms and slaughterhouses. Finally, legislation banning foie gras was recently introduced in four states, indicating a growing concern across the country about the production of the “delicacy.”

#### 1. Antibiotics in Factory Farms

The recent rise in the number of antibiotic-resistant bacteria has led to a closer examination of the use of antibiotics in factory farms.<sup>243</sup> The National Committee for Clinical Laboratory Standards states that the use of antibiotics in farm animals is for the purposes of growth promotion and the treatment, prevention, and control of disease.<sup>244</sup> The Union of Concerned Scientists (UCS) estimated in 2001 that an average of 24.6 million pounds of antibiotics were used on animals for disease prevention and growth production in the 1990s.<sup>245</sup>

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<sup>240</sup> Grace Factory Farm Project, *What is a Factory Farm?* <http://www.factoryfarm.org/whatis/1.php> (accessed Mar. 14, 2006).

<sup>241</sup> *Id.*; see also Am. Pub. Health Assn., *2003-7: Precautionary Moratorium on New Concentrated Animal Feed Operations*, <http://www.apha.org/legislative/policy/2003/> (accessed Mar. 14, 2006) (information on the negative impact of CAFOs on communities, the environment, antibiotic resistance, and CAFO workers); Sierra Club, *Clean Water & Factory Farms, Frequently Asked Questions, What is a CAFO?* <http://www.sierraclub.org/factoryfarms/faq.asp> (accessed Mar. 14, 2006) (discussing the health, environmental, and economic impacts of CAFOs).

<sup>242</sup> See Humane Socy. U.S., *Factory Farming: What People are Doing to Fight Back*, [http://www.hsus.org/farm\\_animals/factory\\_farms/halt\\_hog\\_factories/factory\\_farming\\_what\\_people\\_are\\_doing\\_to\\_fight\\_back.html](http://www.hsus.org/farm_animals/factory_farms/halt_hog_factories/factory_farming_what_people_are_doing_to_fight_back.html) (accessed Mar. 14, 2006) (providing recent examples of community actions to restrict factory farms such as referendums and local ordinances).

<sup>243</sup> Suzanne Millman, *The Emerging Threat of Antibiotic Resistance: A Hidden Cost of Factory Farming*, 4 *All Animals* (mag. of the Humane Socy. U.S.) (Spring 2002) (available at [http://www.hsus.org/press\\_and\\_publications/humane\\_society\\_magazines\\_and\\_newsletters/all\\_animals/volume\\_4\\_issue\\_1\\_spring\\_2002/the\\_emerging\\_threat\\_of\\_antibiotic\\_resistance\\_a\\_hidden\\_cost\\_of\\_factory\\_farming.html](http://www.hsus.org/press_and_publications/humane_society_magazines_and_newsletters/all_animals/volume_4_issue_1_spring_2002/the_emerging_threat_of_antibiotic_resistance_a_hidden_cost_of_factory_farming.html)).

<sup>244</sup> Ian Phillips et al., *Does the Use of Antibiotics in Food Animals Pose a Risk to Human Health? A Critical Review of Published Data*, 53 *J. Antimicrobial Chemotherapy* 28, 28 (Jan. 2004) (available at <http://jac.oxfordjournals.org/cgi/reprint/53/1/28>).

<sup>245</sup> Margaret Mellon & Steven Fondriest, *Hogging It!* 23 *Nucleus* (mag. of the Union Concerned Scientists) (Spring 2001) (available at <http://go.ucsusa.org/publications/nucleus.cfm?publicationID=168>).

Additionally, a UCS report found that seventy percent of the antibiotics commonly used by humans are the same ones used excessively on animals to prevent the outbreak of disease and for growth promotion.<sup>246</sup> In April this past year, a coalition of public health and environmental advocates petitioned the U.S. Food and Drug Administration to bar the use of seven classes of antibiotics on animals for non-therapeutic purposes.<sup>247</sup> This past legislative session, two states introduced legislation addressing the growing concern over the use of antibiotics in animals.

In Maine, Senator Scott Cowger proposed resolution LD 1126 in response to concerns in the medical community over antibiotic-resistant bacteria.<sup>248</sup> Governor John Baldacci (D) signed the Resolution into law on June 3, 2005.<sup>249</sup> The legislation requires the Commissioner of Agriculture, Food, and Rural Resources and the Director of the Bureau of Health to convene a study group to review the use of antibiotics in animal agriculture and report back to the legislature with policy recommendations on how the state should address the impact on humans from such use of antibiotics.<sup>250</sup>

On November 23, 2005, Assembly Bill 837 was introduced in the Wisconsin Legislature by Representative Sondy Pope-Roberts (D).<sup>251</sup> If enacted, the bill would require state agencies and school districts to give preference to "suppliers who provide meat from animals that have not been given antibiotics for other than therapeutic reasons."<sup>252</sup> The bill has been referred to the Assembly Committee on Public Health.<sup>253</sup>

The legislation in Maine and Wisconsin would not ban the use of antibiotics in farm animals for non-therapeutic purposes. Still, the bill and Resolution indicate a growing concern about the rise of antibiotic-resistant bacteria in humans. Although the connection between the rise of antibiotic-resistant bacteria in humans and the use of antibiotics on farm animals is difficult to measure, the prevalence of antibiotic-resistant bacteria in human populations was shown to have declined in

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<sup>246</sup> *Id.*

<sup>247</sup> Marc Kaufman, *FDA is Urged to Ban Some Farm Antibiotics*, Wash. Post A08 (Apr. 8, 2005) (available at <http://www.washingtonpost.com/wp-dyn/articles/A35335-2005Apr7.html>).

<sup>248</sup> Sharon Kiley Mack, *Lawmakers Stuck on Antibiotics in Meat Decision*, Bangor Daily News B8 (Apr. 15, 2005) (available at LEXIS, News library; BGDRLY file).

<sup>249</sup> St. of Me. Legis., *Summary of LD 1126*, <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?LD=1126&SessionID=6> (accessed Mar. 14, 2006).

<sup>250</sup> 2005 ME Acts S.P. 388.

<sup>251</sup> Humane Socy. U.S., *WI A.B. 837 Antibiotic Use in Farm Animals, State Legislation, Wisconsin*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/wisconsin/wi\\_ab\\_837\\_antibiotics.html](http://www.hsus.org/legislation_laws/state_legislation/wisconsin/wi_ab_837_antibiotics.html) (accessed Mar. 14, 2006); Wis. St. Legis., *History of Assembly Bill 837*, <http://www.legis.state.wi.us/2005/data/AB837hst.html> (accessed Mar. 14, 2006) (providing the date the bill was introduced) [hereinafter Wis. St. Legis., *Assembly Bill 837*].

<sup>252</sup> Wis. Assembly 837, 97th Leg., 2005–2006 Reg. Sess. (Nov. 23, 2006) (available at WL, WI-BILLTXT).

<sup>253</sup> Wis. St. Legis., *Assembly Bill 837*, *supra* n. 251, at [http://www.hsus.org/legislation\\_laws/state\\_legislation/wisconsin/wi\\_ab\\_837\\_antibiotics.html](http://www.hsus.org/legislation_laws/state_legislation/wisconsin/wi_ab_837_antibiotics.html).

Denmark and the European Union after the use of antibiotics for growth promotion was banned.<sup>254</sup> The same was shown in Germany and the Netherlands following their ban of the use of the antibiotic avoparcin on farm animals.<sup>255</sup> Finally, it is worth noting that it is often the crowded and unsanitary conditions in factory farms that lead to the rise of antibiotic-resistant bacteria in farm animals.<sup>256</sup>

## 2. Regulation of Factory Farms and Slaughterhouses

The regulation and inspection of factory farms was the subject of several bills introduced in state legislatures in 2005. Michigan and Minnesota legislatures introduced bills that would restrict access to factory farm information and premises.<sup>257</sup> Representative Leslie Mortimer (R) introduced House Bill 4130 which would restrict the ability of the Department of Environmental Quality to enter a factory farm by requiring a warrant.<sup>258</sup> House Bill 2039, introduced by Representative Gregory Davids (R), would classify information about certain areas of a factory farm as non-public.<sup>259</sup> South Carolina Senator Daniel Verdin (R) introduced Senate Bill 304, which will limit the ability of local governments to regulate factory farms.<sup>260</sup> The bills from those three states are all in committees, but may be considered in the 2006 legislative session.<sup>261</sup> Two states did pass legislation regarding the regula-

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<sup>254</sup> David L. Smith et al., *Agricultural Antibiotics and Human Health: Does Antibiotic Use in Agriculture Have a Greater Impact than Hospital Use?* 2 Pub. Lib. Sci. Med. 731, 731 (2005) (available at [http://medicine.plosjournals.org/archive/1549-1676/2/8/pdf/10.1371\\_journal.pmed.0020232-L.pdf](http://medicine.plosjournals.org/archive/1549-1676/2/8/pdf/10.1371_journal.pmed.0020232-L.pdf)).

<sup>255</sup> Frank Moller Aarestrup et al., *Effect of Abolishment of the Use of Antimicrobial Agents for Growth Promotion on Occurrence of Antimicrobial Resistance in Fecal Enterococci from Food Animals in Denmark*, 45 *Antimicrobial Agents & Chemotherapy*, 2054, 2058-59 (2001) (available at <http://aac.asm.org/cgi/content/full/45/7/2054?view=long&pmid=11408222>).

<sup>256</sup> Millman, *supra* n. 243.

<sup>257</sup> Humane Socy. U.S., *MI H.B. 4130 Agricultural Facility Inspections*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/michigan/mi\\_hb\\_4130\\_agriculture\\_facility\\_inspections.html](http://www.hsus.org/legislation_laws/state_legislation/michigan/mi_hb_4130_agriculture_facility_inspections.html) (accessed Mar. 14, 2006) [hereinafter Humane Socy. U.S., *MI H.B. 4130*]; Humane Socy. U.S., *MN H.B. 2039 Public Information on Factory Farms*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/minnesota/mn\\_hb\\_2039\\_public\\_information\\_factory\\_farms.html](http://www.hsus.org/legislation_laws/state_legislation/minnesota/mn_hb_2039_public_information_factory_farms.html) (accessed Mar. 14, 2006) [hereinafter Humane Socy. U.S., *MN H.B. 2039*].

<sup>258</sup> Humane Socy. U.S., *MI H.B. 4130*, *supra* n. 257, at [http://www.hsus.org/legislation\\_laws/state\\_legislation/michigan/mi\\_hb\\_4130\\_agriculture\\_facility\\_inspections.html](http://www.hsus.org/legislation_laws/state_legislation/michigan/mi_hb_4130_agriculture_facility_inspections.html).

<sup>259</sup> Humane Socy. U.S., *MN H.B. 2039*, *supra* n. 257, at [http://www.hsus.org/legislation\\_laws/state\\_legislation/minnesota/mn\\_hb\\_2039\\_public\\_information\\_factory\\_farms.html](http://www.hsus.org/legislation_laws/state_legislation/minnesota/mn_hb_2039_public_information_factory_farms.html).

<sup>260</sup> Humane Socy. U.S., *SC S. 304 Factory Farm Regulation*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/south\\_carolina/sc\\_s\\_304\\_factory\\_farm\\_regulation.html](http://www.hsus.org/legislation_laws/state_legislation/south_carolina/sc_s_304_factory_farm_regulation.html) (accessed Mar. 14, 2006).

<sup>261</sup> Humane Socy. U.S., *MN H.B. 2039*, *supra* n. 257, at [http://www.hsus.org/legislation\\_laws/state\\_legislation/minnesota/mn\\_hb\\_2039\\_public\\_information\\_factory\\_farms.html](http://www.hsus.org/legislation_laws/state_legislation/minnesota/mn_hb_2039_public_information_factory_farms.html); Humane Socy. U.S., *SC S. 304 Factory Farm Regulation*, *supra* n. 260, at

tion of factory farms in the 2005 session: Connecticut and Pennsylvania.<sup>262</sup>

*a. Connecticut*

Representative George M. Wilber (D) sponsored House Bill 5586, which was signed into law by Governor M. Jodi Rell (R) on July 1, 2005.<sup>263</sup> The enacted legislation requires the Commissioner of Agriculture to adopt stricter regulations governing the sanitation standards for “the slaughter of animals, dressing and cleaning of carcasses, holding and handling of carcasses and holding of animals for custom slaughter,” as well as setting out health requirements for the animals at such facilities.<sup>264</sup> However, larger slaughter facilities, such as factory farms inspected by the United States Department of Agriculture, are not covered by the new law.<sup>265</sup> The objective of the legislation is to regulate and register small custom slaughterhouses that slaughter animals for their owners, not for resale.<sup>266</sup>

*b. Pennsylvania*

The Pennsylvania legislature recently passed House Bill 1646 ACRE Initiative.<sup>267</sup> The enacted legislation limits the ability of local municipalities to pass ordinances or regulations that prohibit agricultural practices that are allowed under state law.<sup>268</sup> Under the enacted legislation, an owner of a factory farm may request that the state Attorney General review a local ordinance that regulates factory farms.<sup>269</sup> The Attorney General has the discretion to bring an action in the Commonwealth Court against the local government to invalidate the ordinance or enjoin the ordinance’s enforcement.<sup>270</sup> Additionally, a person “aggrieved by the enactment or enforcement of an unauthorized local ordinance may bring an action against the local government . . .

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[http://www.hsus.org/legislation\\_laws/state\\_legislation/south\\_carolina/sc\\_s\\_304\\_factory\\_farm\\_regulation.html](http://www.hsus.org/legislation_laws/state_legislation/south_carolina/sc_s_304_factory_farm_regulation.html).

<sup>262</sup> *Infra* nn. 263–75 and accompanying text.

<sup>263</sup> Conn. Gen. Assembly, *H.B. No. 5586: Session Year 2005*, “Bill History,” [http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=5586&which\\_year=2005&SUBMIT.x=11&SUBMIT.y=16&SUBMIT=Search](http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=5586&which_year=2005&SUBMIT.x=11&SUBMIT.y=16&SUBMIT=Search) (accessed Mar. 14, 2006).

<sup>264</sup> 2005 Conn. Pub. Act 05-164 (available at <http://www.cga.ct.gov/2005/ACT/PA/2005PA-00164-R00HB-05586-PA.htm>).

<sup>265</sup> *Id.*

<sup>266</sup> Ct. Env. Comm. Rpt., 2005 Reg. Sess. (Mar. 4, 2005) (available at <http://www.cga.ct.gov/2005/jfr/h/2005HB-05586-R00ENV-JFR.htm>).

<sup>267</sup> Humane Socy. U.S., *PA H.B. 1646 ACRE Initiative—Removes Local Authority on Allowing or Prohibiting Factory Farming*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/pennsylvania/pa\\_hb\\_1646\\_factoryfarms.html](http://www.hsus.org/legislation_laws/state_legislation/pennsylvania/pa_hb_1646_factoryfarms.html) (accessed Mar. 14, 2006).

<sup>268</sup> 3 Pa. Consol. Stat. Ann. §§ 311–318 (Westlaw current through Act 2005–96 (End)).

<sup>269</sup> *Id.* at § 314(a).

<sup>270</sup> *Id.* at § 314(b).

in Commonwealth Court.<sup>271</sup> This legislation was enacted in response to Pennsylvania township ordinances that prohibit certain farming practices.<sup>272</sup> As originally drafted, Pennsylvania's legislation would have created an Agricultural Review Board to hear disputes.<sup>273</sup> However, neither the environmental groups opposing the legislation nor farmers in support of it trusted the Board to listen to cases objectively.<sup>274</sup> Although the review process was amended to include oversight by the Attorney General, environmentalists feel the new law will greatly hinder the ability of local communities to regulate factory farms.<sup>275</sup>

### 3. Confinement

Animals in factory farms are forced into an unnatural environment: either immobilized in small crates or cramped inside overcrowded feedlots.<sup>276</sup> Although much of the legislation against factory farms has previously been based on environmental concerns, voters in Florida recently passed a ballot measure that amended the state constitution to regulate large factory farms based on their treatment of animals.<sup>277</sup> Other states may soon be following Florida's example.

In 2005, the Massachusetts legislature had two bills introduced to limit the confinement of animals on factory farms.<sup>278</sup> Senator Steven A. Tolman (D) sponsored Senate Bill 552, and Representative Bradford Hill (R) introduced House Bill 660.<sup>279</sup> The bills are in committee and

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<sup>271</sup> *Id.* at § 315(b).

<sup>272</sup> Charles Lardner, *House Panel OKs ACRE*, *Intelligencer J.* (Pa.) B 01 (June 24, 2005) (available in LEXIS, Pennsylvania News Sources); *see also* Humane Socy. U.S., *supra* n. 242, at [http://www.hsus.org/farm\\_animals/factory\\_farms/halt\\_hog\\_factories/factory\\_farming\\_what\\_people\\_are\\_doing\\_to\\_fight\\_back.html](http://www.hsus.org/farm_animals/factory_farms/halt_hog_factories/factory_farming_what_people_are_doing_to_fight_back.html) (discussing actions taken by Pennsylvania townships to regulate non-family-owned corporate farms).

<sup>273</sup> Lardner, *supra* n. 272.

<sup>274</sup> *Id.* (The environmentalists thought the Board would favor the farmers, while the farmers thought the Board would be composed of radical environmentalists).

<sup>275</sup> *See e.g.* Sierra Club, "ACRE" Legislation Seen as Step Backwards, <http://pennsylvania.sierraclub.org/PACchapter/Issues/ACREpassed.htm> (accessed Mar. 14, 2006).

<sup>276</sup> Humane Socy. U.S., *Frequently Asked Questions about Factory Hog Farms*, [http://www.hsus.org/farm\\_animals/factory\\_farms/the\\_pig\\_factory\\_farm/frequently\\_asked\\_questions\\_about\\_factory\\_hog\\_farms.html](http://www.hsus.org/farm_animals/factory_farms/the_pig_factory_farm/frequently_asked_questions_about_factory_hog_farms.html) (accessed Mar. 14, 2006).

<sup>277</sup> Fla. Const. art. X, § 21 (The section will take effect six years after Nov. 2, 2002, the date it was passed by voters.); *see also* Animal Rights Found. Fla., *Voters Ban Gestation Crates! Floridians Use Citizen Initiative Process to Ban Abusive Factory Farming Method*, <http://animalrightsflorida.org/initiative.html> (accessed Mar. 14, 2006) (Florida became the first state to ban a method of factory farming because of the practice's inhumane treatment of animals); Humane Socy. U.S., *supra* n. 242, at [http://www.hsus.org/farm\\_animals/factory\\_farms/halt\\_hog\\_factories/factory\\_farming\\_what\\_people\\_are\\_doing\\_to\\_fight\\_back.html](http://www.hsus.org/farm_animals/factory_farms/halt_hog_factories/factory_farming_what_people_are_doing_to_fight_back.html) (discussing the passage of the Florida ballot initiative to ban the use of gestation crates).

<sup>278</sup> Humane Socy. U.S., *MA S. 552 & H. 660 Farm Animal Crating*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/massachusetts/ma\\_h\\_660\\_crating.html](http://www.hsus.org/legislation_laws/state_legislation/massachusetts/ma_h_660_crating.html) (accessed Mar. 14, 2006).

<sup>279</sup> *Id.*

may be considered in 2006.<sup>280</sup> Both bills would prohibit confining a pig or calf for more than one day in an enclosure so small that the animal would be unable to turn around freely.<sup>281</sup> In Arizona, Arizonans for Humane Farms have filed an initiative that would criminalize the tight confinement of young calves or pregnant pigs.<sup>282</sup> Activists are working across the state to obtain the two hundred thousand signatures needed to place the measure on the 2006 ballot in Arizona.<sup>283</sup> If successful, the measure would not take effect until 2012 in order to give the animal production facilities enough time to attain compliance with the new law.<sup>284</sup>

#### 4. *Foie Gras*

Apparently following California's lead,<sup>285</sup> a significant number of states have introduced measures in the 2005 legislative session seeking to ban the production or sale of foie gras.<sup>286</sup> This demonstrates a growing awareness among state legislatures about the inhumane treatment inherent in producing this "delicacy." In Hawaii, Illinois, Massachusetts, New York, Oregon, and Washington, bills were introduced to ban either the sale or production of foie gras or the force-feeding of ducks.<sup>287</sup> Unfortunately most of the statutes "died" in committee or were not passed in the most recent legislative session.<sup>288</sup> At this time, two states still have pending legislation that would prohibit the practice of force-feeding birds to produce foie gras: Massachusetts and New York.<sup>289</sup>

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<sup>280</sup> *Id.*

<sup>281</sup> Mass. H. 660, 184th Gen. Ct., 2005 Reg. Sess. (Jan. 5, 2005) (available at WL MA-BILLTXT); Mass. S. 552, 184th Gen. Ct., 2005 Reg. Sess. (Jan. 5, 2005) (available at WL MA-BILLTXT).

<sup>282</sup> Chip Scutar, *Initiative Opposes Confined Livestock: Activists Call Practice 'Cruel,'* Ariz. Republic (Sept. 19, 2005, 12:00 AM) (available at <http://www.azcentral.com/arizonarepublic/local/articles/0919pigs19.html>).

<sup>283</sup> Humane Socy. U.S., *Arizona Humane Groups Launch Statewide Ballot Campaign to Halt the Suffering of Farm Animals on Factory Farms*, [http://www.hsus.org/press\\_and\\_publications/press\\_releases/arizona\\_humane\\_groups\\_launch\\_statewide\\_ballot\\_campaign\\_to\\_halt\\_the\\_suffering\\_of\\_farm\\_animals\\_on\\_factory\\_farms.html](http://www.hsus.org/press_and_publications/press_releases/arizona_humane_groups_launch_statewide_ballot_campaign_to_halt_the_suffering_of_farm_animals_on_factory_farms.html) (Sept. 6, 2005).

<sup>284</sup> *Id.*

<sup>285</sup> See Tamara S. Santelli, Student Author, *2004 Legislative Review*, 11 Animal L. 325, 359 (Joshua D. Hodes ed., 2005) (California was the first state to prohibit the force-feeding of birds to produce foie gras and to ban the sale of foie gras so produced.).

<sup>286</sup> *Infra* nn. 287-89 and accompanying text.

<sup>287</sup> Farm Sanctuary, *Pending Legislation, State*, <http://www.farmsanctuary.org/campaign/legislation.htm> (accessed Mar. 14, 2006).

<sup>288</sup> *Id.*

<sup>289</sup> Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, New York*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=NY](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=NY) (accessed Mar. 14, 2006); Humane Socy. U.S., *MA S. 498 Force Feeding Birds for Foie Gras*, [http://hsus.org/legislation\\_laws/state\\_legislation/Massachusetts/ma\\_s\\_498\\_force\\_feeding\\_birds\\_for\\_foie\\_gras.html](http://hsus.org/legislation_laws/state_legislation/Massachusetts/ma_s_498_force_feeding_birds_for_foie_gras.html) (site no longer available).

### D. Breed-Specific Legislation

“Breed-specific legislation” is a term coined by pet owners to refer to laws and regulations that target the “breed of a particular dog, as opposed to the conduct of the specific dog.”<sup>290</sup> Many municipalities and some states have enacted breed-specific legislation in response to highly publicized dog attacks on people.<sup>291</sup> Typically, breed-specific legislation has banned or restricted ownership of “Pit Bulls, Rottweilers, Doberman Pinschers, Chow Chows, German Shepards, and Shar-Peis.”<sup>292</sup> Additionally, insurance companies have reacted to the “rash” of dog bites by increasing insurance premiums for homeowner policies or denying coverage to owners of specified dog breeds, a practice known as “breed discrimination.”<sup>293</sup> In the 2005 legislative session, states began to address the rising costs of breed discrimination. Ten states proposed legislation to prevent insurance companies from denying, adjusting, or terminating insurance coverage based on the breed of a pet.<sup>294</sup> California, on the other hand, passed legislation that amended existing law to allow local municipalities to regulate ownership and require spaying or neutering for certain dog breeds.<sup>295</sup>

#### 1. California Passes Breed-Specific Legislation

The death of a twelve year old boy from an attack by his family’s pit bull led San Francisco mayor Gavin Newsom (D) to create a task force to evaluate the dangers of dog attacks.<sup>296</sup> The task force recommended a spaying and neutering program directed at allegedly dangerous breeds of dogs, higher fines for unregistered dogs, and compulsory liability insurance for owners of “specified vicious and dangerous dogs.” However, under California law at that time, San Francisco could not enact breed-specific legislation.<sup>297</sup> At the request of San Francisco officials, Senator Jackie Speier (D) sponsored California Senate Bill 861 to allow local municipalities to enact breed-specific leg-

<sup>290</sup> Kenneth Morgan Phillips, *Dog Bite Law: Breed Specific Laws, Regulations and Bans*, <http://www.dogbitelaw.com/PAGES/breedlaws.html> (last updated Dec. 17, 2005).

<sup>291</sup> Larry Cunningham, *The Case against Dog Breed Discrimination by Homeowners’ Insurance Companies*, 11 Conn. Ins. L. J. 1, 8 (2004); see also Jan Cooper, *Breed-Specific Legislation*, <http://www.rott-n-chatter.com/rottweilers/laws/breedspecific.html> (accessed Mar. 14, 2006) (listing counties and cities that have enacted bans on, or legislation restricting, specific dog breeds).

<sup>292</sup> Cunningham, *supra* n. 291, at 8.

<sup>293</sup> *Id.* at 11–14.

<sup>294</sup> *Infra* nn. 310–12 and accompanying text.

<sup>295</sup> Kate Williamson, *Dog-Law Referendum’s Tail Drops*, San Francisco Examiner (Jan. 3, 2006) (available at [http://www.sfexaminer.com/articles/2006/01/04/news/20060104\\_ne02\\_doglaws.txt](http://www.sfexaminer.com/articles/2006/01/04/news/20060104_ne02_doglaws.txt)) (site no longer available).

<sup>296</sup> Cal. Assembly Comm. Analysis on Sen. 861, 2005–2006 Reg. Sess 1 (June 29, 2005) (available at [http://www.leginfo.ca.gov/pub/bill/sen/sb\\_0851-0900/sb\\_861\\_cfa\\_20050628\\_153621\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_0851-0900/sb_861_cfa_20050628_153621_asm_comm.html)).

<sup>297</sup> *Id.* at 2–3.

islation.<sup>298</sup> Governor Schwarzenegger (R) subsequently signed the bill into law on October 7, 2005.<sup>299</sup> The legislation allows cities and counties to enact breed-specific ordinances that relate to mandatory spay or neuter programs and breeding requirements.<sup>300</sup> However, the county or city cannot require that a specific dog breed or mixed dog breed be declared as potentially dangerous.<sup>301</sup>

Breed-specific legislation has faced opposition from many organizations since it was initially proposed.<sup>302</sup> Opponents argue that such legislation is unfair to responsible pet owners, difficult to administer, and more costly than the existing California law.<sup>303</sup> After the California bill became law, the Coalition of Human Advocates for K9 Outcasts (CHAKO) attempted, but failed, to collect enough signatures for a referendum to overturn the law.<sup>304</sup> CHAKO is currently attempting to litigate and is also working to place a proposition on the next ballot to overturn the new law.<sup>305</sup> San Francisco has already passed a breed-specific ordinance that may serve as a model for other cities and counties in California.<sup>306</sup>

## 2. Prohibitions on Breed Discrimination by Insurance Companies

Insurance companies' practice of breed discrimination is largely a response to both highly publicized dog attacks and an increase in payouts for dog bite liability claims.<sup>307</sup> But the impacts on owners of rising insurance costs have been dire, and owners are often forced to choose between obtaining insurance coverage for their homes or keeping their pets.<sup>308</sup> Organizations such as state veterinary associations, HSUS, and other animal advocacy groups have been lobbying states to

<sup>298</sup> Williamson, *supra* n. 295.

<sup>299</sup> Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, California*, [http://www.aspca.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=CA](http://www.aspca.org/site/PageServer?pagename=lobby_endofsessions&s_state=CA) (accessed Mar.14, 2006).

<sup>300</sup> Cal. Health & Safety Code Ann. § 122331 (West 2005).

<sup>301</sup> *Id.*

<sup>302</sup> Cal. Assembly Comm. Analysis. on Sen. 861 at 5 (noting complaints from 18 organizations and 107 individuals).

<sup>303</sup> *Id.* at 3.

<sup>304</sup> Coalition Human Advoc. for K9s & Owners, *California Volunteers: We Need You Now!* <http://www.chako.org/no861.html> (accessed Mar. 14, 2006).

<sup>305</sup> *Id.*

<sup>306</sup> *Law Allowing Breed-Specific Regulations Takes Effect*, San Jose Mercury News (Jan. 20, 2006) (available at [http://www.mercurynews.com/mld/mercurynews/news/breaking\\_news/13671778.htm](http://www.mercurynews.com/mld/mercurynews/news/breaking_news/13671778.htm)).

<sup>307</sup> Cunningham, *supra* n.291, at 6; Brian Sodergren, *Insurance Companies Unfairly Target Specific Dog Breeds*, [http://www.hsus.org/pets/issues\\_affecting\\_our\\_pets/insurance\\_companies\\_unfairly\\_target\\_specific\\_dog\\_breeds.html](http://www.hsus.org/pets/issues_affecting_our_pets/insurance_companies_unfairly_target_specific_dog_breeds.html) (accessed Mar. 14, 2006) (Insurance companies claim that nearly one-third of claims against homeowner's insurance are from dog bites, forcing the industry to pay \$310 million annually.).

<sup>308</sup> Sodergren, *supra* n. 307, at [http://www.hsus.org/pets/issues\\_affecting\\_our\\_pets/insurance\\_companies\\_unfairly\\_target\\_specific\\_dog\\_breeds.html](http://www.hsus.org/pets/issues_affecting_our_pets/insurance_companies_unfairly_target_specific_dog_breeds.html).



pass legislation banning breed discrimination.<sup>309</sup> In response to this practice by insurance companies, legislation was introduced in ten states.<sup>310</sup>

Connecticut, Maine, Oregon, Vermont, and West Virginia legislatures failed to pass bills that would have limited or prohibited the ability of insurance companies to consider the breed of dogs when offering or renewing homeowner's insurance.<sup>311</sup> Hawaii, Massachusetts, New York, Washington, and Wisconsin have pending bills that may be considered in 2006.<sup>312</sup> Of the five pending bills, Massachusetts House Bill 1565 offers the broadest protection for pet owners. The bill requires homeowner's insurance to cover *all* domestic animals.<sup>313</sup> The bills from the four remaining states limit breed discrimination, but allow insurance companies to deny coverage or increase premiums in certain circumstances. In the New York and Washington legislation, insurers may not deny, refuse to renew, cancel, or adjust premiums of the homeowner's insurance policy solely based on the breed of the dog, unless the breed of dog has been classified as dangerous under the state's law.<sup>314</sup> The proposed legislation in Hawaii and Wisconsin would not allow an insurance company to deny or adjust insurance coverage based on the type of dog the homeowner owns, but the legislation

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<sup>309</sup> Bridget M. Kuehn, J. Am. Veterinary Med. Assn. News, *Breed Discrimination Bites Homeowners: Insurance Companies Dropping Home Insurance Coverage for Owners of Large Dog Breeds*, <http://www.avma.org/onlnews/javma/may03/030515m.asp> (May 15, 2003).

<sup>310</sup> *Infra* nn. 311–315 and accompanying text.

<sup>311</sup> Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, Connecticut*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=CT](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=CT) (accessed Mar. 14, 2006); Am. Socy. Prevention Cruelty Animals, *2005 End of Session Reports, West Virginia*, [http://www.aspc.org/site/PageServer?pagename=lobby\\_endofsessions&s\\_state=WV](http://www.aspc.org/site/PageServer?pagename=lobby_endofsessions&s_state=WV) (accessed Mar. 14, 2006); Humane Socy. U.S., *Maine*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/state\\_legislation-list.html?state=maine](http://www.hsus.org/legislation_laws/state_legislation/state_legislation-list.html?state=maine) (accessed Mar. 14, 2006); Humane Socy. U.S., *OR H.B. 2584 Prohibits Breed Specific Insurance Denial*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/oregon/or\\_hb\\_2684\\_breed\\_specific.html](http://www.hsus.org/legislation_laws/state_legislation/oregon/or_hb_2684_breed_specific.html) (accessed Oct. 25, 2005) (site no longer available); Humane Socy. U.S., *Vermont*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/state-legislation-list.html?state=vermont](http://www.hsus.org/legislation_laws/state_legislation/state-legislation-list.html?state=vermont) (accessed Mar. 14, 2006).

<sup>312</sup> Humane Socy. U.S., *HI S.B. 137 Dog Breed Discrimination*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/hawaii/hi\\_sb\\_137\\_dog\\_discrimination.html](http://www.hsus.org/legislation_laws/state_legislation/hawaii/hi_sb_137_dog_discrimination.html) (accessed Mar. 14, 2006); Humane Socy. U.S., *MA H. 1565 Prohibits Discrimination by Homeowners Insurance*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/massachusetts/ma\\_h\\_1565\\_homeowner\\_insurance.html](http://www.hsus.org/legislation_laws/state_legislation/massachusetts/ma_h_1565_homeowner_insurance.html) (accessed Mar. 14, 2006); Humane Socy. U.S., *NY A. 1824 Insurance Based on Breed*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/new\\_york/ny\\_a\\_1824\\_dog\\_breed\\_insurance.html](http://www.hsus.org/legislation_laws/state_legislation/new_york/ny_a_1824_dog_breed_insurance.html) (accessed Mar. 14, 2006); Humane Socy. U.S., *WA H.B. 1016 Breed-Specific Insurance*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/washington/wa\\_hb\\_1016\\_breedspecific\\_insurance.html](http://www.hsus.org/legislation_laws/state_legislation/washington/wa_hb_1016_breedspecific_insurance.html) (accessed Mar. 14, 2006); Humane Socy. U.S., *WI A.B. 363 Prohibits Dog Breed Discrimination by Insurance Companies*, [http://www.hsus.org/legislation\\_laws/state\\_legislation/wisconsin/wi\\_ab\\_363\\_prohibits\\_dog\\_breed\\_discrimination\\_by\\_insurance\\_companies.html](http://www.hsus.org/legislation_laws/state_legislation/wisconsin/wi_ab_363_prohibits_dog_breed_discrimination_by_insurance_companies.html) (accessed Mar. 14, 2006).

<sup>313</sup> Mass. H. 1565, 184th Gen. Ct., 2005 Reg. Sess. (Jan. 5, 2005).

<sup>314</sup> N.Y. Assembly 1824, 228th Leg. Sess. (Jan. 21, 2005); Wash. H. 1016, 59th Leg., 2005 Reg. Sess. (Dec. 28, 2004).

would allow insurance companies to consider the past behavior of the owner's dog.<sup>315</sup>

Although none of the introduced bills passed during the 2005 legislative session, the amount of legislation introduced indicates a probable trend for animal law in state legislatures. Many animal welfare organizations view the trend of breed discrimination as an unjustified excuse for insurance companies to raise premiums.<sup>316</sup> However, some insurance companies argue that it is unfair to create a strict standard when consumers for insurance have choices between companies.<sup>317</sup> While a growing number of insurance companies will bar coverage for specific breeds, some companies will evaluate a customer on a case-by-case basis, and others will allow the customer to purchase a separate liability policy to cover their pet.<sup>318</sup> Yet, in the end, many proponents for the legislation feel that there is something unfair in broadly categorizing people's pets, and this sentiment is likely to be the motivation behind future state legislation aimed at preventing breed discrimination.<sup>319</sup>

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<sup>315</sup> Haw. Sen. 137, 23rd Leg., 2006 Reg. Sess. (Jan. 20, 2005); Wis. Assembly 363, 97th Leg., 2005-2006 Reg. Sess. (Apr. 22, 2005).

<sup>316</sup> Kuehn, *supra* n. 309, at <http://www.avma.org/onlnews/javma/may03/030515m.asp> (The AVMA, American Kennel Club, and animal welfare organizations believe that breed discrimination is not scientifically supported because the data on dog bites is inaccurate and incomplete.).

<sup>317</sup> Paul Gores, *Insurers Barking over Dog Breed Bias Bill*, Milwaukee J. Sentinel (Aug. 20, 2005) (available at <http://www.jsonline.com/bym/news/aug05/349596.asp>).

<sup>318</sup> Jenny C. McCune, *Homeowners Insurance Is Going to the Dogs*, <http://www.bankrate.com/brm/news/insurance/dog-policies1.asp> (accessed Mar. 14, 2006).

<sup>319</sup> Gores, *supra* n. 317 (Representative John Lehman (D) introduced Wisconsin Assembly Bill 363 after Julie Totsh, a constituent who did not herself own a "controversial breed" of dog, told him about breed discrimination.).