

## I. STATE INITIATIVES

A. *Floridians Attempt to Ban Gestation Crates*

Throughout 2001, animal rights groups, Floridians for Humane Farms, and the Humane Society of the United States (HSUS), rallied support for a petition to amend Florida's constitution to prohibit the use of gestation crates.<sup>1</sup> While the proposed amendment is not yet an official item on the 2002 ballot, it is significant in that it is the first Florida state proposal to address animal welfare and the first state initiative addressing farm animals.<sup>2</sup>

Gestation crates are metal enclosures, typically two by seven feet, used to hold breeding sows during most of their productive lives.<sup>3</sup> Pork producers utilize gestation crates to reduce labor and feed.<sup>4</sup> Because the dimensions of the crates are so small, sow mobility within the crate is limited to standing and lying down.<sup>5</sup> Animal rights advocates call gestation crates one of the "cruellest factory farming tools in use" and point to evidence of resulting health problems in sows.<sup>6</sup> Some research indicates that sows living in gestation crates suffer from crippling foot and joint disorders, decreased muscle strength, chronic stress, depression, and other disorders.<sup>7</sup>

Floridians for Humane Farms initially attempted to gather support for the ban from the state legislature, but faced strong opposition by the Florida Farm Bureau.<sup>8</sup> When efforts failed, the group rallied voter support for a constitutional amendment through the initiative process.<sup>9</sup> The group needs 650,000 signatures to place the amendment, titled "Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy," on the November 2002 ballot.<sup>10</sup> To date, the group has collected approximately 235,000 signatures, and the proposed amendment has passed Florida Supreme Court review for consistency with legal requirements.<sup>11</sup>

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<sup>1</sup> The Humane Society of the United States, *Help Florida Ban Gestation Crates* <<http://www.hsus.org/ace/132481>> (accessed Mar. 7, 2002).

<sup>2</sup> Bob Mahlburg, *Pig Initiative Passes High Court's Muster: The Justices Said a Proposal to Ban Tight Cages For Pregnant Pigs Can Proceed*, Orlando Sentinel Trib. C1 (Jan. 18, 2002).

<sup>3</sup> Ban Cruel Farms, *Landmark Florida Ballot Measure Launched to Ban Abusive Factory Farming Practice* <<http://www.bancruelfarms.org/common/newsletter.pdf>> (accessed Feb. 6, 2002).

<sup>4</sup> Ban Cruel Farms, *The Welfare of Sows in Gestation Crates: A Summary of the Scientific Evidence* <<http://www.bancruelfarms.org/evidence.htm>> (accessed Feb. 6, 2002).

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

<sup>6</sup> Ban Cruel Farms, *Ban Cruel Farms: Promoting the Humane Treatment of Farm Animals* <<http://www.bancruelfarms.org>> (accessed Feb. 6, 2002).

<sup>7</sup> Ban Cruel Farms, *supra* n. 4.

<sup>8</sup> Mahlburg, *supra* n. 2.

<sup>9</sup> Ellen Perlman, *Crate Exploitations*, Governing Mag. (Jan. 2002), <<http://governing.com/archive/2002/jan/glimpses.txt>> (accessed Apr. 4, 2002).

<sup>10</sup> *Id.*

<sup>11</sup> Mahlburg, *supra* n. 2.

The proposed amendment would make it unlawful to tether or confine a sow to an enclosure during pregnancy in such a way that the sow could not turn around freely.<sup>12</sup> Some limited instances of crate use would be allowed, including use for veterinary treatment and during the seven day period prior to the expected date of birth.<sup>13</sup> The amendment also provides that violators will be guilty of a first degree misdemeanor, punishable as provided in section 775.082(4)(a) of the Florida Statutes, by a fine of not more than \$5,000, or a combination of imprisonment and fine.<sup>14</sup>

Opponents to the amendment include the Florida Farm Bureau, the Florida Pork Producers, and the National Pork Producers.<sup>15</sup> They contend that gestation crates are used to protect sows from other pigs that fight for food and should not be considered cruel.<sup>16</sup> Furthermore, they argue that the issue should be resolved through legislative action rather than a constitutional amendment by voters.<sup>17</sup>

#### *B. Oklahoma Voters Aim to Put an Initiative to Ban Cockfighting on the 2002 Ballot*

This year, the HSUS, the Fund for Animals, and other groups in Oklahoma garnered support to place an initiative to ban cockfighting on the November 2002 ballot.<sup>18</sup> The initiative is pivotal for animal advocates because Oklahoma is one of only three remaining states where cockfighting is legal.<sup>19</sup>

Cockfighting is an activity where two or more roosters are placed in a pit and baited to fight each other to the death as spectators watch and place bets on the outcome.<sup>20</sup> To ensure a brutal match, cockfighters breed roosters for aggression, drug them with stimulants to increase aggression levels, and attach knives or gaffs to their legs.<sup>21</sup>

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<sup>12</sup> Ban Cruel Farms, *Constitutional Amendment Petition Form*, <[http://www.ban-cruelfarms.org/common/capf\\_humane1.pdf](http://www.ban-cruelfarms.org/common/capf_humane1.pdf)> (accessed Feb. 6, 2002).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Eric Barton, *Petition Targets Pig Cages*, Sarasota Herald-Tribune BM1 (July 15, 2001).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Humane Society of the United States, *Oklahoma Supreme Court Clears Anti-Cockfighting Measure for Ballot* <<http://www.hsus.org/ace/13218>> (accessed Mar. 7, 2002).

<sup>19</sup> New Mexico and Louisiana also allow cockfighting. See Diane Plumberg Clay, *High Court Clears Cockfighting Vote*, The Daily Oklahoman 1A (Nov. 14, 2001).

<sup>20</sup> The Humane Society of the United States, *Cockfighting Facts* <<http://www.hsus.org/ace/11449>> (accessed Mar. 7, 2002).

<sup>21</sup> The Humane Society of the United States, *Statement of the Humane Society of the United States Opposing the Ballot Measure to Take Away the Voting Rights of Oklahomans and to Provide Constitutional Protection for Cockfighting* <[http://www.hsus.org/programs/government/statement\\_measure\\_ok\\_sq698.html](http://www.hsus.org/programs/government/statement_measure_ok_sq698.html)> (accessed Feb. 1, 2002).

Participant roosters frequently die or suffer gouged eyes, punctured lungs, or broken limbs.<sup>22</sup>

If passed, the initiative will add a new section to the Oklahoma statutes that would make cockfighting illegal.<sup>23</sup> The initiative provides for a broad range of violations, all of which are felonies, including instigating or encouraging cockfighting; keeping facilities or equipment for cockfighting; aiding or assisting in cockfighting; and keeping, training, or owning birds for cockfighting.<sup>24</sup> Those persons found in violation of the statute would face up to ten years in prison and a fine of up to \$25,000.<sup>25</sup>

Since the initiative's inception, the Oklahoma Gamefowl Breeders Association (OGBA) has launched fierce opposition to its passage.<sup>26</sup> In November 2001, the group sought legal review of the petition, arguing that it lacked enough valid signatures to be eligible for the 2002 ballot.<sup>27</sup> A referee ruled in its favor, but later that month, the Oklahoma Supreme Court overruled the referee's decision by an 8-0 vote.<sup>28</sup> In December 2001, the OGBA asked the Oklahoma Supreme Court for rehearing of the issue and is currently awaiting the court's decision, which will determine whether the initiative will reach voters on the 2002 ballot.<sup>29</sup>

## II. STATE STATUTES

### A. *Rhode Island Becomes the First State to Recognize Individuals as Guardians of Their Companion Animals*

This year, several Rhode Island high school students joined forces with pet-assisted therapists and Representative Elizabeth M. Dennigan (D) to rally support for legislation recognizing individuals as guardians of their companion animals.<sup>30</sup> The Senate approved H. 6119 in July 2001, making Rhode Island the first state to pass such legislation.<sup>31</sup> It follows previous municipal legislation enacted by a number of

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<sup>22</sup> The Humane Society of the United States, *Statement of the Humane Society of the United States in Support of the Oklahoma Ballot Initiative Banning Cockfighting* <[http://www.hsus.org/programs/government/statement\\_initiative\\_ok\\_sq687.html](http://www.hsus.org/programs/government/statement_initiative_ok_sq687.html)> (accessed Feb. 6, 2002).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Diane Plumberg Clay, *Issues Raised Over Petition: Court Asked to Revisit Decision on Anti-Cockfighting Initiative*, *The Daily Oklahoman* 1A (Dec. 27, 2001).

<sup>26</sup> John Greiner, *Foes of Cockfighting Seek to Ensure State Vote on Ban*, *The Daily Oklahoman* 4A (Jan. 23, 2001).

<sup>27</sup> *Id.*

<sup>28</sup> Clay, *supra* n. 25, at 1A.

<sup>29</sup> *Id.*

<sup>30</sup> Rhode Island General Assembly, *Students Make History by Helping to Draft and Pass Animal Rights Legislation* <[http://www.rilin.state.ri.us/leg\\_press/2001/september/Dennigan%20pets.htm](http://www.rilin.state.ri.us/leg_press/2001/september/Dennigan%20pets.htm)> (Sept. 26, 2001).

<sup>31</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: Rhode Island* <[http://www.hsus.org/programs/government/state01.html#Rhode Island](http://www.hsus.org/programs/government/state01.html#Rhode%20Island)> (accessed Feb. 6, 2002).

cities including Boulder, Colorado, and West Hollywood and Berkeley, California.<sup>32</sup>

The new law adds a definition for the word "guardian" to the state's animal laws.<sup>33</sup> Under the law, "guardian" means "a person(s) having the same rights and responsibilities of an owner, and both terms shall be used interchangeably."<sup>34</sup> It also provides that "a guardian shall also mean a person who possesses, has title to or an interest in, harbors or has control, custody or possession of an animal and who is responsible for an animal's safety and well-being."<sup>35</sup> Proponents of the bill hope the new definition will elevate public perception of pets from property to that of "individuals with needs and interests of their own."<sup>36</sup>

### B. Oregon, Nevada, New Jersey, and Washington Pass Legislation Allowing Trusts for Pets

In response to the increasing number of individuals wishing to provide for pets' welfare during estate planning, Oregon, Nevada, New Jersey, and Washington have passed legislation creating legally binding pet trusts.

#### 1. Oregon

In Oregon, both legislative houses approved H.B. 2739, and Governor John Kitzhaber signed it into law in June 2001.<sup>37</sup> The bill, sponsored by Representative Lane Shetterly (R), corrects the enforceability problem commonly associated with honorary trusts.<sup>38</sup> For some time, Oregon courts have been willing to consider money devised to a pet an honorary trust.<sup>39</sup> Courts, however, could not review abuses of the trust because pets lack legal standing.<sup>40</sup> The new law authorizes the creation of a pet trust, creates a presumption against "merely precatory or honorary disposition," and sets up a scheme for appointing a person to enforce the trust.<sup>41</sup> It provides that a trust will be enforced by a person designated in the trust or, if no person is designated, the circuit court may appoint a person for that purpose.<sup>42</sup>

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<sup>32</sup> In Defense of Animals, *State of Rhode Island Recognizes Animal Guardians* <[http://www.idausa.org/news/currentnews/news\\_ri.html](http://www.idausa.org/news/currentnews/news_ri.html)> (Aug. 2, 2001).

<sup>33</sup> American Dog Owners Association, "Guardian" Now a Part of State Law <<http://www.adoa.org/states/ri/ri.shtml>> (July 16, 2001).

<sup>34</sup> R.I. Gen. Laws § 4-1-1(a)(4) (2001).

<sup>35</sup> *Id.*

<sup>36</sup> In Defense of Animals, *supra* n. 32.

<sup>37</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: Oregon* <<http://www.hsus.org/programs/government/state01.html#Oregon>> (accessed Feb. 17, 2002).

<sup>38</sup> Tomoko Hosaka, *Bill Fetches Legal Weight For Fido's Trust*, *The Oregonian* B1 (Apr. 8, 2001).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Or. Rev. Stat. Ann. § 128.308(1) (2001).

<sup>42</sup> Or. Rev. Stat. Ann. § 128.308(2) (2001).

## 2. Nevada

The Carson/Eagle Valley Humane Society of Nevada supported Assembly Bill 33, a bill validating trusts for the care of animals.<sup>43</sup> Governor Kenny Guinn signed the bill into law on May 29, 2001.<sup>44</sup> The new legislation provides that “[a] trust created for the care of one or more animals that are alive at the time of the settlor’s death is valid.”<sup>45</sup> It requires courts to liberally construe testamentary documents in favor of creating a trust.<sup>46</sup> It also provides a mechanism for a “person having a demonstrated interest in the welfare of the animal beneficiary” to petition the court “for an order to appoint himself as trustee or to remove the trustee.”<sup>47</sup>

## 3. New Jersey

In July 2001, New Jersey Governor Donald DiFrancesco signed A.B. 1152 into law.<sup>48</sup> Assemblymembers Scott Garrett (R), Guy Gregg (R), and Senator Norm Robertson (R) sponsored the bill, which validates trusts for the care of domesticated animals.<sup>49</sup> It provides that the “intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument, a person appointed by the court, or a trustee.”<sup>50</sup> The law also contains a provision expressly prohibiting a trustee from converting trust principal or income “to the use of the trustee or to any use other than for the benefit of the animal designated in the trust.”<sup>51</sup>

## 4. Washington

In Washington, both legislative houses approved H.B. 2046-S, a bill that recognizes and validates trusts created for the care of animals.<sup>52</sup> Governor Gary Locke approved the bill, but vetoed sections ten and fourteen.<sup>53</sup> The veto did not affect the substance of the bill, but was necessary to strike matter already covered and enacted in S.B.

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<sup>43</sup> Nevada Legislature, *Minutes of the Senate Committee on Judiciary* <<http://www.leg.state.nv.us/71st/Minutes/Senate/JUD/Final/1145.html>> (accessed Feb. 6, 2001).

<sup>44</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: Nevada* <<http://www.hsus.org/programs/government/state01.html#Nevada>> (accessed Feb. 6, 2001).

<sup>45</sup> Nev. Rev. Stat. Ann. § 163.0075(1) (2001).

<sup>46</sup> *Id.*

<sup>47</sup> Nev. Rev. Stat. Ann. § 163.0075(3) (2001).

<sup>48</sup> Herb Jackson, *Easing the Problem of Pet Heirs*, *The Record* (N.J.) O5 (July 15, 2001).

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

<sup>50</sup> N.J. Stat. Ann. § 3B:11-38(a) (2001).

<sup>51</sup> N.J. Stat. Ann. § 3B:11-38(b) (2001).

<sup>52</sup> Wash. Rev. Code § 11.118.020 (2001).

<sup>53</sup> Washington State Legislature, *Digest on Substitute Bill* <[http://www.leg.wa.gov/pub/billinfo/2001-02/House/2025-2049/2046-s\\_dig\\_05172001.txt](http://www.leg.wa.gov/pub/billinfo/2001-02/House/2025-2049/2046-s_dig_05172001.txt)> (accessed Feb. 6, 2002).

5054.<sup>54</sup> The law validates trusts “for the care of one or more animals” and provides a scheme for enforcing the terms and conditions of the trust.<sup>55</sup> It also contains provisions that expressly prohibit trustee conversion of funds and allows a person with interest in the welfare of the animal to petition the court to remove or appoint a trustee.<sup>56</sup>

### C. States Enact Laws Regarding Animal Fighting

Though animal fighting activities are illegal in most states, they have been on the rise in recent years.<sup>57</sup> This year, a number of states took action to provide added protection for animals by toughening animal fighting laws.

#### 1. Arizona

In April 2001, Governor Jane Dee Hull signed H.B. 2010, a bill amending previous law to impose a duty on veterinarians to report suspected incidents of both dog fighting and animal abuse.<sup>58</sup> While previous laws required veterinarians to report dog fighting only, the new law requires a veterinarian to provide a written report to a local law enforcement agency when she “reasonably suspects and believes” that the dog or animal has either participated in an organized fight or has otherwise been abused.<sup>59</sup> It also extends the time frame for reporting from five to thirty days after the examination or treatment.<sup>60</sup>

#### 2. Colorado

In March 2001, Governor Bill Owens signed H.B. 1069, which requires an owner to pay for the care of an animal impounded due to charges of animal fighting.<sup>61</sup> If the owner fails to post bond, the animal shelter will handle disposition (i.e., adoption, placement, etc.) of the animal.<sup>62</sup> The new law also requires forfeiture of an animal, upon motion by the prosecuting attorney or court itself, if an owner is convicted of animal abuse or animal fighting.<sup>63</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> Wash. Rev. Code § 11.118.020 (2001); Wash. Rev. Code § 11.118.050 (2001).

<sup>56</sup> Wash. Rev. Code § 11.118.030 (2001).

<sup>57</sup> For instance, dog fighting is illegal in all fifty states and it is a felony offense in forty-seven of those states. Similarly, cockfighting is illegal in forty-seven states and in twenty-eight of those states, cockfighting is a felony; The Humane Society of the United States, *Animal Fighting: The Final Round* <<http://www.hsus.org/ace/11452>> (accessed Mar. 7, 2002).

<sup>58</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: Arizona* <<http://www.hsus.org/programs/government/state01.html#Arizona>> (accessed Feb. 6, 2002); Ariz. Rev. Stat. § 32-2239 (2001).

<sup>59</sup> Ariz. Rev. Stat. § 32-2239 (A) (2001).

<sup>60</sup> *Id.*

<sup>61</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: Colorado* <<http://www.hsus.org/programs/government/state01.html#Colorado>> (accessed Feb. 6, 2002); Colo. Rev. Stat. § 18-9-202.5 (2001).

<sup>62</sup> *Id.*

<sup>63</sup> Colo. Rev. Stat. § 18-9-208(1) (2001).

### 3. *Illinois*

In Illinois, Governor George Ryan signed into law two bills concerning dog fighting activities in the state. H.B. 2440 amends the Illinois Criminal Code to include dog fighting prohibitions and penalties for individuals engaged in dog fighting.<sup>64</sup> The bill includes a broad range of penalties and provides that individuals who "own, capture, breed, train, or lease" a dog for fighting will be subject to a Class Four felony and may be fined up to \$50,000.<sup>65</sup> The same penalty applies to those convicted of promoting or assisting in the fight and to those convicted of selling, buying, or transporting dogs for such fights.<sup>66</sup> Violators are subject to the higher Class Three felony if a person under age eighteen is present, gambling is involved, or the fight is in furtherance of a street gang related activity.<sup>67</sup>

The other bill enacted in 2001, S.B. 629, makes a number of changes to the Illinois Humane Care for Animals Act.<sup>68</sup> It requires a veterinarian to report the treatment of an animal "where there is a reasonable possibility that the animal was engaged in or utilized for a fighting event for the purposes of sport, wagering, or entertainment."<sup>69</sup> It also authorizes the seizure and impoundment of animals and equipment used in a dog fight.<sup>70</sup> Lastly, it increases penalties from misdemeanors to felonies.<sup>71</sup>

### 4. *Louisiana*

In Louisiana, the legislature considered a number of bills regarding animal fighting.<sup>72</sup> Two bills, S.B. 682 and H.B. 2064, were introduced, but died in committee.<sup>73</sup> S.B. 682 would have extended the state's prohibition on dog fighting to include all types of animal fighting.<sup>74</sup> H.B. 2064 would have made it unlawful for a person to train a dog to attack or kill a human or other animal.<sup>75</sup>

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<sup>64</sup> 720 Ill. Comp. Stat. § 5/26-5 (2001).

<sup>65</sup> *Id.* § 26-5(i)(1).

<sup>66</sup> *Id.* § 26-5(i)(2.5)

<sup>67</sup> *Id.* § 26-5(i)(1)(i)-(iii).

<sup>68</sup> 510 Ill. Comp. Stat. § 70/1 (2001).

<sup>69</sup> *Id.* § 4.01(k).

<sup>70</sup> *Id.* § 4.01(i).

<sup>71</sup> Illinois General Assembly, *92nd General Assembly: Summary of SB 0629* <<http://www.legis.state.il.us/scripts/imstran.exe?LIBSINCWSB0629>> (accessed Feb. 6, 2002).

<sup>72</sup> The Humane Society of the United States, *Find Out What is Proposed in Your State: Louisiana* <<http://www.hsus.org/programs/government/proposedstateleg2001.html#Louisiana>> (accessed Feb. 6, 2002).

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

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

The legislature, however, passed S.B. 866 and H.B.1459,<sup>76</sup> and Governor Murphy James Foster, Jr. signed both bills into law in the summer of 2001.<sup>77</sup> The bills toughen existing dog fighting laws. S.B. 866 expands violations of the existing dog fighting law to include training dogs for fighting.<sup>78</sup> It makes it unlawful for a person to intentionally “own, possess, keep, or train a dog for the purpose of dog fighting.”<sup>79</sup> It also describes activities that will be used as evidence of violations of the law.<sup>80</sup> Activities include possession of treadmill paraphernalia coupled with evidence that it is being used for training dogs for fighting, “tying, attaching, or fastening any live animal to a machine or power propelled device for the purpose or causing the animal to be pursued by a dog,” and “possession of a dog exhibiting injuries or alterations consistent with dog fighting.”<sup>81</sup> H.B. 1459 significantly increases penalties for violations of the dog fighting law.<sup>82</sup> Violations are punishable by a fine of no less than \$1,000 and as great as \$25,000, imprisonment from one to ten years, or both.<sup>83</sup>

## 5. Maryland

The Maryland legislature considered H.B. 993, a bill increasing penalties for dog fighting, but the bill died in committee.<sup>84</sup> The legislature, however, approved companion bills, S.B. 356 and H.B. 649, which make aggravated cruelty to animals a felony.<sup>85</sup> Maryland’s governor, Parris Glendening, signed both bills in May, 2001.<sup>86</sup> A person commits aggravated cruelty when that person “intentionally mutilates, tortures, cruelly beats, or cruelly kills an animal.”<sup>87</sup> Aggravated cruelty also includes “using or allowing a dog to be used in a dog fight” and “using or allowing a bird, fowl, or cock to fight with another animal.”<sup>88</sup> Persons found in violation are subject to “fines up to \$5,000, imprison-

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<sup>76</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoes in 2001: Louisiana* <[http://www.hsus.org/programs/government/state01.html# Louisiana](http://www.hsus.org/programs/government/state01.html#Louisiana)> (accessed Feb. 17, 2002).

<sup>77</sup> *Id.*

<sup>78</sup> La. Stat. Ann. § 14:102.5 (2001).

<sup>79</sup> *Id.* § 102.5(A)(7)(a).

<sup>80</sup> *Id.* § 102.5(A)(7)(b)(i-iii).

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

<sup>82</sup> *Id.* § 102.5(C).

<sup>83</sup> *Id.*

<sup>84</sup> The Humane Society of the United States, *Find Out What is Proposed in Your State: Maryland* <<http://www.hsus.org/programs/government/proposedstateleg2001.html#Maryland>> (accessed Feb. 6, 2002).

<sup>85</sup> Sara Marsh, *Lawmakers Leave Behind Dozens of Bills*, *The Capital* (Annapolis, Md.) D1 (Apr. 11, 2001); Md. H. 649, 415th Sess., Reg. Sess., § 59(c)(2) (Feb. 7, 2001); Md. S. 356, 415th Sess., Reg. Sess., § 59(c)(2) (date unavailable).

<sup>86</sup> The Humane Society of the United States, *supra* n. 84.

<sup>87</sup> 2001 Md. A.L.S. 593 § 59(C)(1)(I), (2)(I).

<sup>88</sup> *Id.* § 59(C)(1)(III)-(IV).



ment for up to 3 years, or both.<sup>89</sup> A violator must also undergo psychological counseling if convicted.<sup>90</sup>

## 6. Nevada

In Nevada, Senator Ann O'Connell (R) introduced S.B. 62 after a citizen contacted her with a tale of egregious animal abuse.<sup>91</sup> The bill, which would make certain acts of animal mistreatment subject to felony penalties, is a response to violators receiving small fines and short spans of imprisonment under misdemeanor penalty provisions.<sup>92</sup> The bill seeks to increase penalties for acts of abuse and participation in animal fighting activities.<sup>93</sup> If passed, the bill provides that persons involved in animal fighting will be subject to increasing levels of felonies for offenses beyond the first offense.<sup>94</sup> In addition, if the fighting activity involves a dog, the first offense would be a felony.<sup>95</sup> Those persons who witness orchestrated fights between animals would be subject to misdemeanors for the first two offenses, and the third and subsequent offenses result in felonies.<sup>96</sup>

### *D. Nevada and Wyoming Consider Legislation Affecting Wild Horses*

#### 1. Nevada

This year, a number of Nevada elementary school children and thirteen state lawmakers rallied support for A.B. 219, a bill that would designate the wild horse as an official state animal.<sup>97</sup> Proponents of the bill hoped it would bring greater respect for wild horses in Nevada, where about 25,000 of the United States' 48,600 wild horses live.<sup>98</sup> The bill met strong opposition by ranchers, who were concerned that a state animal designation would lead to greater protection of wild horses.<sup>99</sup> Ranchers regard wild horses as nuisances because they compete

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<sup>89</sup> *Id.* § 59(C)(2)(I).

<sup>90</sup> *Id.* § 59(C)(2)(II).

<sup>91</sup> J.M. Kalil, *State Legislature: Animal Lovers Get Behind Bill*, Las Vegas Review-Journal B4 (Feb. 22, 2001).

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

<sup>93</sup> Nev. Rev. Stat. Ann. § 574.070 (LEXIS L. Publg. 2001).

<sup>94</sup> *Id.* § 574.070(3)(a)-(c).

<sup>95</sup> *Id.* § 574.070(5)(a).

<sup>96</sup> *Id.* § 574.070(4)(a)-(c).

<sup>97</sup> Keith Rogers, *Students: Horse Should Be State Animal*, Las Vegas Review-Journal B4 (May 17, 2001).

<sup>98</sup> Ed Vogel, *Assembly Committee Hears Pupils' Mustang Plea*, Las Vegas Review-Journal B1 (Mar. 21, 2001).

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

with cattle grazing on public lands.<sup>100</sup> The bill eventually died in the conference committee.<sup>101</sup>

## 2. Wyoming

In Wyoming, Representative John Eyre (R) responded to an outbreak of thirty-seven wild horse killings during a two month period by sponsoring a bill to make that practice illegal.<sup>102</sup> Wyoming Governor Jim Geringer signed H.B. 183 on March 1, 2001.<sup>103</sup> The new law defines a wild horse as “a horse, mare, filly or colt which is unbranded and unclaimed and lives on state or public land.”<sup>104</sup> It prohibits “[a]ny person, without legal justification[,]” from willfully and maliciously killing a wild horse.<sup>105</sup> The penalty provision, however, may reduce the law’s effectiveness, as violations are punishable by a fine of not more than \$750, imprisonment for not more than six months, or both.<sup>106</sup> The bill had originally provided a fine of \$2,000, imprisonment for not more than six months, or both.<sup>107</sup>

### *E. Alabama and West Virginia Pass Legislation to Protect Bears*

#### 1. Alabama

The Alabama Wildlife Federation and Alabama Black Bear Alliance reacted to two bear poaching incidents by gathering support for a bill to increase protection and fines.<sup>108</sup> Representative Jimmy Warren (D) and Senator Zeb Little (D) sponsored H.B. 437, and Governor Siegelman signed it into law on May 29, 2001.<sup>109</sup> Under existing Alabama law, it is illegal to hunt or possess black bears.<sup>110</sup> The new law adds to the list of proscribed activities by making it unlawful for any person to

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

<sup>101</sup> The Humane Society of the United States, *Find Out What is Proposed in Your State: Nevada* <<http://www.hsus.org/programs/government/proposedstateleg2001.html#Nevada>> (accessed Feb. 6, 2002).

<sup>102</sup> *Law Would Protect Wild Horses*, Rocky Mt. News A7 (Feb. 2, 2001).

<sup>103</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoes in 2001: Wyoming* <<http://www.hsus.org/programs/government/state01.html#Wyoming>> (accessed Feb. 6, 2002).

<sup>104</sup> Wyo. Stat. Ann. § 11-30-115(a) (2001).

<sup>105</sup> Wyo. Stat. Ann. § 11-30-115(b) (2001).

<sup>106</sup> *Id.*

<sup>107</sup> The Wyoming State Legislature, *2001 General Session: House Bills for Introduction and Substitute Bills* <<http://legisweb.state.wy.us/2001/Introduced/hbills.htm>> (accessed Feb. 17, 2002).

<sup>108</sup> See generally Alabama Wildlife Federation, *Governor’s Conservation Achievement Awards 2001* <<http://www.alawild.org/awards01.htm>> (accessed Feb. 6, 2002).

<sup>109</sup> *Id.*

<sup>110</sup> Alabama Legislature, *HB 437 as Introduced (Regular Session 2001)* <<http://alisdb.legislature.state.al.us/acas/ACTIONViewFrame.asp?TYPE=instrument&INST=HB437&DOCPATH=searchableinstruments/2001RS/Printfiles/&PHYDOCPATH=//alisdb/acas/searchableinstruments/2001RS/PrintFiles/&DOCNAMES=HB437-int.pdf,,HB437-enr.pdf>> (accessed Feb. 17, 2002).

"hunt, wound, injure, kill, trap, collect, or capture a black bear."<sup>111</sup> It is also unlawful for any person to "sell, offer for sale, purchase, offer to purchase, deliver, transport, carry, or ship, in intrastate, interstate, or foreign commerce a black bear, whether alive or dead, or any of its parts or products, or to attempt to engage in that conduct."<sup>112</sup> Violations are misdemeanors, punishable by a fine of \$2,000 to \$5,000, or imprisonment for up to one year for the first offense.<sup>113</sup> The second and subsequent offenses carry a fine of \$3,500 to \$5,000, or imprisonment for six months to one year, or both.<sup>114</sup>

## 2. *West Virginia*

In West Virginia, the legislature passed S.B. 40, and Governor Bob Wise signed it into law in May 2001.<sup>115</sup> The new law extends the bear protection law to prohibit the possession, sale, or purchase of bear parts outside of the hunting season.<sup>116</sup> It also increases penalties for violations. First offenses result in fines of \$1,000 to \$5,000, imprisonment for 30 to 100 days, or both.<sup>117</sup> For a first offense, fishing and hunting licenses will be suspended for two years.<sup>118</sup> Second offenses carry fines of \$2,000 to \$7,500, imprisonment for thirty days to one year, or both.<sup>119</sup> For a second offense, fishing and hunting licenses will be suspended for life.<sup>120</sup> Third and subsequent offenses are felonies and result in fines of \$5,000 to \$10,000, imprisonment for one to five years, or both.<sup>121</sup>

### III. FEDERAL LEGISLATION

#### A. *Five Amendments to the Farm Security Act*

Four animal protection amendments were proposed to the Farm Security Act (Farm Bill), H.R. 2646, which seek to end the inhumane practices of dragging sick or injured animals to slaughter, to ban the interstate and foreign transport of animals used for fighting, and to protect animals destined for slaughter from the needless suffering they currently endure. All four amendments passed through the House of Representatives on October 4, 2001, making it the single most produc-

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<sup>111</sup> Ala. Code § 9-11-269.1(a)(1) (2001).

<sup>112</sup> *Id.* § 9-11-269.1(a)(2).

<sup>113</sup> *Id.* § 9-11-269.1(d)(1).

<sup>114</sup> *Id.* § 9-11-269.1(d)(2).

<sup>115</sup> The Humane Society of the United States, *Animal Legislation Enacted or Vetoed in 2001: West Virginia* <<http://www.hsus.org/programs/government/state01.html#West Virginia>> (accessed Feb. 6, 2002).

<sup>116</sup> W. Va. Code § 20-2-22(a) (2001).

<sup>117</sup> W. Va. Code § 20-2-22(c) (2001).

<sup>118</sup> *Id.* § 20-2-22(e)(1).

<sup>119</sup> *Id.* § 20-2-22(e)(2).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* § 20-2-22(e)(3).

tive day for animal protection in history.<sup>122</sup> Similar Senate amendments passed in the Senate on February 13, 2002.<sup>123</sup> The amendments are currently in the House-Senate Conference Committee, where both the House and the Senate are working out the differences between the House and Senate versions of the amended Farm Bill.<sup>124</sup>

In addition to the four animal protection amendments to the Farm Security Act, the Helms Amendment to the Senate version of the Act seeks to exclude rats, mice, and birds from the protections of the Animal Welfare Act (AWA) recently granted to them by a federal court.<sup>125</sup> The Amendment passed in the Senate, along with the other four amendments, and is also currently in the House-Senate Conference Committee.<sup>126</sup>

### 1. *The Downed Animal Amendment*

One of the proposed amendments introduced by Representative Gary Ackerman (D-NY) and Amo Houghton (R-NY) to the Federal Farm Security Act is the Downed Animal Amendment. The amendment creates civil penalties for violating, and criminal penalties for “knowingly” violating the new amendment.<sup>127</sup> The Amendment seeks to eliminate the practice of allowing livestock that are too weak from disease or injury to walk unassisted to be dragged with chains or pushed with a bulldozer<sup>128</sup> or forklift<sup>129</sup> to slaughter. Live animals are often bulldozed into piles of dead animals, and left to suffer and die.<sup>130</sup> The Amendment would make it unlawful for any stockyard owner, market agency, or dealer to “buy, sell, give, receive, transfer, market, hold, or drag” any nonambulatory livestock unless the nonambulatory livestock has been humanely euthanized.<sup>131</sup> The amendment defines humane euthanization as killing by mechanical, chemical, or other means that immediately renders an animal unconscious until its death.<sup>132</sup> The amendment goes on to define “nonambulatory livestock”

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<sup>122</sup> U.S. Newswire, *House Passes Four Animal Protection Amendments to Farm Bill* <[http://www.usnewswire.com/topnews/Current\\_Releases/1005-123.html](http://www.usnewswire.com/topnews/Current_Releases/1005-123.html)> (Oct. 4, 2001).

<sup>123</sup> The Humane Society of the United States, *U.S. Senate Passes Farm Bill Addressing Animal Fighting, Puppy Mills, Downed Farm Animals, and Bears* <<http://www.hsus.org/ace/13184>> (accessed Mar. 7, 2002).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*; See *Alternatives Research & Dev. Found. v. Glickman*, 101 F. Supp. 2d 7 (D.D.C. 2000).

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

<sup>127</sup> H.R. Res. 1421, 107th Cong. § 2(c),(d) (2001).

<sup>128</sup> Farm Sanctuary Campaign, *Downed Animal Legislation Passes U.S. House and Senate!* <[http://www.nodowners.org/dapa\\_hr.htm](http://www.nodowners.org/dapa_hr.htm)> (accessed Mar. 5, 2002).

<sup>129</sup> The Humane Society of the United States, *U.S. House of Representatives Passes Four Animal Protection Amendments to the Farm Bill: Laws Protecting Farm Animals and Prohibiting Animal Fighting Strengthened on Historic Day on Capitol Hill* <<http://www.hsus.org/news/100501.html>> (Oct. 5, 2001).

<sup>130</sup> Farm Sanctuary Campaign, *supra* n. 128.

<sup>131</sup> H.R. Res. 1421, 107th Cong. § 2(b)(2001).

<sup>132</sup> *Id.* § 2(a)(1).

as any livestock that is unable to stand and walk unassisted.<sup>133</sup> A single violation is defined as each day on which a violation occurs and each instance of prohibited action against nonambulatory livestock.<sup>134</sup> Civil penalties of not more than \$2,500 per violation could be imposed, as well as criminal penalties of not more than one year in prison per knowing violation.<sup>135</sup>

While the Downed Animal Amendment has several non-governmental supporters, it has no vocal opposition. Organizations like the HSUS and the Doris Day Animal League<sup>136</sup> view the amendment not only as a means to end the inhumane practice of dragging sick or injured animals to slaughter, but also as a means to increase food safety.<sup>137</sup> According to Gene Bauston, the Executive Director of Farm Sanctuary, "It is inexcusable that downed animals are marketed for food, suffering intolerable cruelty at stockyards and threatening the safety of the food supply."<sup>138</sup> Bauston notes that the federal School Lunch Program, and even many fast food chains already reject meat from downed animals because of concerns about food safety.<sup>139</sup>

The Downed Animal Amendment passed by voice vote in the House on October 4, 2001, with 141 co-sponsors.<sup>140</sup> This Amendment closely resembles an amendment to the Senate Farm Bill, S. 1731, which passed on February 13, 2002.<sup>141</sup> The Downed Animal Amendment to the Senate Farm Bill differs from the Downed Animal Amendment passed in the House in that both civil and criminal penalties are imposed in the House version.<sup>142</sup> Both amendments are currently in the House-Senate Conference Committee, where discrepancies between the House and Senate versions of the Farm Bill will be reconciled.<sup>143</sup> There is a strong indication that the House amendment may be detrimentally altered to remove the civil and criminal penalties prior to leaving the committee.<sup>144</sup>

## 2. *The Anti-Cockfighting Amendment*

The Anti-Cockfighting Amendment to the Farm Security Act, formally titled "Interstate Movement of Animals for Animal Fighting," seeks to close a loophole in the AWA's anti-cockfighting clause by prohibiting the interstate movement of birds used for the purpose of

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<sup>133</sup> *Id.* § 2(a)(2).

<sup>134</sup> *Id.* § 2(c).

<sup>135</sup> *Id.* § 2(c),(d).

<sup>136</sup> Doris Day Animal League, *Current Federal Legislation* <<http://www.ddal.org/federallegislation.html>> (accessed Feb. 4, 2001).

<sup>137</sup> The Humane Society of the United States, *supra* n. 129.

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

<sup>139</sup> *Id.*

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

<sup>141</sup> The Humane Society of the United States, *supra* n. 123.

<sup>142</sup> H.R. Res. 1421, 107th Cong. (2001); Sen. Res. 267, 107th Cong. (2001).

<sup>143</sup> The Humane Society of the United States, *supra* n. 123.

<sup>144</sup> Metropets Online, *The Law and Your Pet: Current Legislation* <<http://www.metropets.org/Law/current.htm>> (accessed Feb. 4, 2001).

fighting into states where animal fighting is lawful.<sup>145</sup> The amendment is also intended to stop all foreign transport of birds for the purpose of fighting.<sup>146</sup> The Amendment, proposed by Representatives Earl Blumenauer (D-OR) and Tom Tancredo (R-CO),<sup>147</sup> seeks to amend the AWA by striking subsection (d) of the act, which currently states:

Notwithstanding the provisions of subsection (a), (b), or (c) of this section, the activities prohibited by such subsections shall be unlawful with respect to fighting ventures involving live birds *only if* the fight is to take place in a State where it would be in violation of the laws thereof.<sup>148</sup>

The amendment seeks to replace this language with the following:

ACTIVITIES NOT SUBJECT TO PROHIBITION-This section does not apply to the selling, buying, transporting, or delivery of animals in interstate or foreign commerce for any purpose or purposes, so long as those purposes do not include that of an animal fighting venture.<sup>149</sup>

The loophole in the AWA that this bill is intended to close undermines the enforcement of state bans on cockfighting because it allows persons possessing cocks to claim that they were intended for shipment to states where cockfighting is legal, when the cocks were, in reality, being used for illegal fights.<sup>150</sup> Currently, cockfighting is only legal in three states: Louisiana, New Mexico, and Oklahoma.<sup>151</sup>

Proponents of the amendment argue that cockfighting is inhumane because cocks are often drugged and affixed with knives and razor blades<sup>152</sup> in order to inflict pain and injury upon each other. They also note that cockfighting is associated with illegal gambling and drug trafficking.<sup>153</sup> Proponents of the amendment, which include animal welfare and rights organizations and the American Veterinary Medical Association,<sup>154</sup> hail closing the loophole as a victory, and believe that it will help quash the currently thriving nationwide cockfighting industry.<sup>155</sup>

Opponents of the amendment include those involved in the use of nonfighting cocks, who are concerned that the amendment will affect the use of cocks for show and legitimate agricultural purposes.<sup>156</sup> How-

<sup>145</sup> H.R. Res. 1155, 107th Cong. § 1(a) (2001).

<sup>146</sup> *Id.* § 1(d).

<sup>147</sup> U.S. Newswire, *supra* n. 122.

<sup>148</sup> 7 U.S.C. § 2156 (2001) (emphasis added).

<sup>149</sup> H.R. Res. 1155, 107th Cong. § 1(d) (2001).

<sup>150</sup> The Humane Society of the United States, *supra* n. 129.

<sup>151</sup> American Humane Association, *Help to Pass Anti-Cockfighting Amendments* <<http://www.americanhumane.org/actnow/cockfighting.htm>> (accessed Mar. 5, 2002).

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

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

<sup>154</sup> American Veterinary Medical Association, *What's Happening In DC: Prohibition on the Movement of Fighting Birds: Proposed Amendment to the Animal Welfare Act* <<http://www.avma.org/grd/fightingbirds.asp>> (accessed Feb. 4, 2001).

<sup>155</sup> Media Addict, *Support Needed for Two Important Bills* <<http://www.mediaaddict.com/what/support.htm>> (Oct. 3, 2001).

<sup>156</sup> American Humane Association, *supra* n. 151.

ever, the amendment clearly states that only those involved in the interstate transfer of *fighting* cocks will be affected by the amendment.<sup>157</sup>

The Anti-Cockfighting Amendment passed in the House on October 4, 2001,<sup>158</sup> and an identical amendment passed in the Senate on February 13, 2002.<sup>159</sup> The amendment is currently in the House-Senate Conference Committee, where Representatives and Senators will work out the differences between the House and Senate versions of the Farm Bill.<sup>160</sup>

### 3. *The Animal Fighting Amendment*

The Animal Fighting Amendment, introduced by Representatives Earl Blumenauer (D-OR) and Tom Tancredo (R-CO), would ban the foreign transport of birds, dogs, and other animals for the purpose of fighting.<sup>161</sup> In addition, the Amendment would increase the penalty for violations of the animal fighting prohibition in the AWA to two years in prison and a \$15,000 fine.<sup>162</sup> Currently, the penalties stand at one year in prison and a \$5,000 fine, and it is unlawful to engage an animal in fighting which was transported or received interstate or internationally, or to knowingly promote an animal fight through use of the U.S. Postal Service.<sup>163</sup> AWA penalties for fighting currently extend to the trainers and handlers of the animals.<sup>164</sup>

Animal fighting is an underground "sport" in which animals are pitted against each other to fight, sometimes to the death.<sup>165</sup> Animals, often dogs, are trained from birth to fight.<sup>166</sup> Dogs are placed in a pit and forced to fight until one of the dogs is unwilling or unable to fight any longer, often one to two hours after the fight begins.<sup>167</sup> Dogs used in the fights often suffer extensive blood loss, dehydration, infections, and shock.<sup>168</sup> Smaller animals, such as cats and rabbits, are used to train the dogs.<sup>169</sup> These animals are often stolen pets, or pets obtained through "free to good home" advertisements.<sup>170</sup>

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<sup>157</sup> H.R. Res. 1155, 107th Cong. § 1 (2001).

<sup>158</sup> U.S. Newswire, *supra* n. 122.

<sup>159</sup> The Humane Society of the United States, *supra* n. 123.

<sup>160</sup> *Id.*

<sup>161</sup> H.R. Res. 335, 107th Cong. (2001).

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

<sup>163</sup> 7 U.S.C. § 2155 (2001).

<sup>164</sup> *Id.*

<sup>165</sup> The Humane Society of the United States, *US Senate Approves Measure to Combat Animal Fighting* <<http://www.hsus.org/ace/13187>> (accessed Mar. 7, 2002).

<sup>166</sup> The Humane Society of the United States, *Dogfighting Fact Sheet*, <<http://www.hsus.org/ace/11451>> (accessed Mar. 7, 2002).

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

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

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

The Animal Fighting Amendment passed the House on October 4, 2001.<sup>171</sup> The Amendment is currently in the House-Senate Conference Committee, where senators and representatives will work out the differences between the House and Senate Farm Bills.<sup>172</sup> This particular provision is not likely to be debated intensely in the committee, since the House and Senate approved identical provisions on animal fighting.<sup>173</sup>

#### 4. *Humane Slaughter Resolution*

The Humane Slaughter Resolution was borne of a 2001 *Washington Post* article exposing repeated violations of the Act, against which the federal government took no action.<sup>174</sup> The Resolution seeks to uphold the Humane Methods of Slaughter Act of 1958,<sup>175</sup> which requires that animals be rendered insensible to pain when they are slaughtered.<sup>176</sup> The Resolution requires that the Secretary of Agriculture track the number of violations of the Humane Methods of Slaughter Act and report trends annually to Congress.<sup>177</sup> In addition, the Resolution aims to ensure safer working conditions, improve products and profits in working operations, and produce benefits for those individuals who expedite the interstate travel of livestock for slaughter.<sup>178</sup> The overarching goal of the Resolution is to recognize and establish a policy that humane methods should be used in the handling and slaughter of livestock.<sup>179</sup>

The need for this Resolution arises from changes in meat inspection processes, where the focus of the meat industry has moved from humane slaughter practices to an increased focus on food safety.<sup>180</sup> This has led to a decrease in concern for the humane treatment of animals for slaughter; as such, animals are being skinned and dismembered while still alive and conscious.<sup>181</sup> For example, a videotape obtained from the world's largest slaughterhouse in Wallula, Washington shows cows being skinned and having their legs cut off, without having first been stunned.<sup>182</sup> Employees of the slaughterhouse feared

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<sup>171</sup> U.S. Newswire, *supra* n. 122.

<sup>172</sup> The Humane Society of the United States, *supra* n. 123.

<sup>173</sup> *Id.*

<sup>174</sup> H.R. Con. Res. 175, 107th Cong. (2001). See Joby Warrick, *They Die Piece by Piece: In Overtaxed Plants, Humane Treatment of Cattle is Often a Battle Lost*, *The Wash. Post* A01 (Apr. 10, 2001).

<sup>175</sup> 7 U.S.C. § 1901 (2001).

<sup>176</sup> H.R. Con. Res. 175, 107th Cong. (2001).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* § 1(B)(iv).

<sup>179</sup> *Id.* § 2.

<sup>180</sup> The Humane Society of the United States, *Humane Society of the United States Praises House of Representatives for Passage of Humane Slaughter Act Amendment* <<http://www.hsus.org/news/100401a.html>> (Oct. 4, 2001).

<sup>181</sup> *Id.*

<sup>182</sup> *Six Farm Animal Stories*, 50 *Animal Welfare Inst. Q.* 4 <<http://www.avionline.org/pubs/Quarterly/Fall2001/farmanimalarticles.htm>> (Fall 2001).



that they would be fired for stopping the line for struggling and conscious animals; rather than changing the practice, the United States Department of Agriculture (USDA) allowed the plant to erect a wall to block the view of plant inspectors.<sup>183</sup> This Resolution would attempt to ensure that animals would not have to endure such torture.

While the Resolution has no vocal opponents, it has a number of supporters, including Senator Robert Byrd (D-WV), who, after criticizing the mistreatment of farm animals, added \$3.5 million to the budget for increased enforcement of the Humane Slaughter Act.<sup>184</sup> Other supporters include numerous animal rights and animal welfare groups.

The Resolution, introduced in the House by Representatives Connie Morella (R-MD), Elton Gallegly (R-CA) and Christopher Shays (R-CT), has thirty co-sponsors and passed the House on October 4, 2001.<sup>185</sup> A similar resolution passed the Senate on February 13, 2002.<sup>186</sup> Both Resolutions are currently pending in the House-Senate Conference Committee, where representatives and senators are sorting out the differences between the two Farm Bills.<sup>187</sup>

##### 5. *The Helms Amendment*

Senator Jesse Helms (R-NC) introduced an amendment to the Senate Farm Bill, which would bar the USDA from including rats, mice, and birds under the protection of the AWA.<sup>188</sup> The AWA regulates the care, handling, treatment, and transportation of animals used in laboratories.<sup>189</sup> Rats, mice, and birds, which comprise ninety-five percent of all animals used in laboratory research, were excluded from the AWA until a recent federal court order compelled the USDA to modify its definition of "animal" to include them in the Act.<sup>190</sup> Senator Helms' introduction of the amendment seeks to reverse the effect of the court order.<sup>191</sup>

On February 13, 2002, the Senate passed the Helms Amendment.<sup>192</sup> However, the amendment is not yet in the clear, as it must

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<sup>183</sup> *Id.*

<sup>184</sup> U.S. Newswire, *supra* n. 122.

<sup>185</sup> *Bill Summary and Status Info for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/D?d107:4:/temp/~bdTIIi:@@L&summ2=m&>> (accessed Mar. 7, 2002).

<sup>186</sup> The Humane Society of the United States, *U.S. Senate Passes Farm Bill Addressing Animal Fighting, Puppy Mills, Farm Animals and Bears* <<http://www.hsus.org/ace/13184>> (accessed Mar. 7, 2002).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> People for the Ethical Treatment of Animals, *Last Chance to Protect 95 Percent of Animals in Labs* <<http://peta.org/alert/automation/AlertItem.asp?id=353>> (accessed Mar. 5, 2002).

<sup>190</sup> *Id. See Alternatives Res. & Devel. Found. v. Glickman*, 101 F. Supp. 2d 7 (D.D.C. 2000).

<sup>191</sup> The Humane Society of the United States, *supra* n. 186.

<sup>192</sup> *Id.*

still survive scrutiny in the House-Senate Conference Committee.<sup>193</sup> Since the House version of the Bill does not include this provision, it is possible that the amendment will be stripped from the final version of the Bill before it is sent to the President.<sup>194</sup> There is also an increased possibility that the amendment will be removed due to opposition from animal welfare groups, such as the HSUS, which plans to voice its opposition to the amendment, and urge the committee members to drop the amendment so that millions of animals used in research every year will be adequately protected.<sup>195</sup>

*B. Leahy-Fitzgerald Forced Molting Amendment to the Senate Agricultural Appropriations Bill*

Senators Patrick Leahy (D-VT) and Peter Fitzgerald (R-IL) introduced an amendment to the Senate Agricultural Appropriations Bill, S. 1191, which would curb the cruel practice of forced molting by barring the USDA from purchasing eggs for the federal School Lunch Program from producers that engage in the practice.<sup>196</sup> Forced molting is a practice in which hens are starved for up to fourteen days until they begin to molt (drop their feathers), thus shocking their system into a new egg-laying cycle.<sup>197</sup> In addition to being inhumane, forced molting is also dangerous to human health, and particularly children's health,<sup>198</sup> as it has been shown to weaken a hen's immune system, making the hen and her eggs more susceptible to diseases, such as *Salmonella*.<sup>199</sup>

The amendment, authored by the HSUS and Food Animal Concerns Trust (FACT),<sup>200</sup> seeks to prevent taxpayer funding under the federal School Lunch Program for eggs produced at facilities which employ forced molting techniques.<sup>201</sup> The School Lunch Program allows children whose families are at or below 185 percent of the poverty level to receive free or reduced-priced breakfasts, snacks, and lunches.<sup>202</sup> Twenty-seven million children are currently enrolled in the program.<sup>203</sup> The move by the Senate to ban the use of eggs from forced molting institutions would protect the health of the children in the pro-

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<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> The Humane Society of the United States, *Help the Hens* <[http://www.hsus.org/programs/government/forced\\_molting\\_072401.html](http://www.hsus.org/programs/government/forced_molting_072401.html)> (accessed Feb. 4, 2002).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Humane USA, *Federal Legislation: Support Humane Amendments to S. 1191* <[http://www.humaneusa.org/fed\\_leg/107/s1191.htm](http://www.humaneusa.org/fed_leg/107/s1191.htm)> (accessed Feb. 4, 2002).

<sup>200</sup> Food Animal Concerns Trust (FACT), *Implement Egg Safety Rules* <[http://www.fact.cc/current\\_status.htm](http://www.fact.cc/current_status.htm)> (accessed Feb. 4, 2002).

<sup>201</sup> Humane USA, *supra* n. 199.

<sup>202</sup> United States Department of Agriculture, *Child Nutrition Web Page: National School Lunch Program* <<http://www.fns.usda.gov/cnd/Lunch/AboutLunch/faqs.htm>> (accessed Feb. 4, 2002).

<sup>203</sup> *Id.*

gram from *Salmonella* infections, which the Centers for Disease Control and Prevention estimate are responsible for 1.3 million illnesses and five hundred deaths each year.<sup>204</sup> The move by the Senate would also join such fast-food giants as Burger King and McDonald's in refusing to purchase eggs from institutions that engage in starvation practices that lead to forced molting.<sup>205</sup> Supporters of the amendment hope that it will make the inhumane practice economically unviable and thus lead to the cessation of forced molting.<sup>206</sup>

The Senate Agricultural Appropriations Bill was postponed indefinitely by the Senate on November 29, 2001.<sup>207</sup> However, the House version of the Bill, H.R. 2330, passed in both the House and the Senate, and was signed into law on November 28, 2001.<sup>208</sup> The House version did not include the amendment.<sup>209</sup>

### C. *Baby Chicks Amendment to the Treasury-Postal Appropriations Bill*

This Amendment would allow day old chicks and "such other live animals as postal regulations allow" to be mailed as ordinary airmail.<sup>210</sup> Under the Amendment, postal carriers would be permitted to refuse to carry live animals and would be compensated for any expense incurred by doing so.<sup>211</sup> While U.S. Postal Service regulations do not indicate specifically what "other live animals" can currently be mailed as ordinary airmail, the regulations do specify that injurious animals and illegally taken fish and wildlife, are not mailable.<sup>212</sup>

The move in the Senate to declare day old fowl as ordinary airmail came on the heels of Northwest Airlines' refusal, as of September 1, 2001, to ship chicks as anything other than live animal cargo.<sup>213</sup> Northwest's decision was based on the awareness that approximately thirty percent of the chicks die during shipment, despite employee efforts to warm them with blankets or in management offices.<sup>214</sup> Northwest intends to ship chicks as live animal cargo, the same as it would cats or dogs, because its employees have gone to great lengths to save the chicks, and the airline has only been compensated at the same

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<sup>204</sup> FACT, *supra* n. 200.

<sup>205</sup> The Fund for Animals, *Stop the Practice of Starving Birds* <[http://fund.org/library/documentViewer.asp?ID=160&table=action\\_alerts](http://fund.org/library/documentViewer.asp?ID=160&table=action_alerts)> (accessed Feb. 4, 2002).

<sup>206</sup> *Id.*

<sup>207</sup> *Bill Summary & Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:SN01191:@@X>> (accessed Feb. 21, 2002).

<sup>208</sup> *Bill Summary and Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:h.r.02330:>> (accessed Feb. 22, 2002).

<sup>209</sup> Pub. L. No. 107-76 (Nov. 28, 2001).

<sup>210</sup> Sen. Res. 1397, 107th Cong. § 1 (2001).

<sup>211</sup> *Id.*

<sup>212</sup> 39 U.S.C. § 3015 (2001); The Lacey Act, 16 U.S.C. § 3372.

<sup>213</sup> The Augusta Chronicle, *Airline: Baby Chicks are Not Luggage* <[http://www.augustachronicle.com/stories/100101/biz\\_124-7989.shtml](http://www.augustachronicle.com/stories/100101/biz_124-7989.shtml)> (Oct. 1, 2001).

<sup>214</sup> *Id.*

level it would be for shipping a Christmas card.<sup>215</sup> Shipping the chicks as live animal cargo would allow employees to receive three times more compensation.<sup>216</sup> Northwest's headquarters in Minnesota is a prime location for many midwest poultry farms, who claim to have no other option for shipping chicks.<sup>217</sup> Thus, it will still receive business despite the rate increases.

Supporters of this amendment include poultry farmers who are afraid that they could go out of business if forced to spend more money for shipping their "merchandise."<sup>218</sup> These farmers insist that they already take enough precautions to ensure the safety of the chicks since they are only paid for "living" chicks.<sup>219</sup> Opponents of the Amendment, such as the HSUS, contend that the death of some chicks is taken into account by farmers when contracting for the airmail transfer; thus, precautions are not taken for the safe transfer of chicks.<sup>220</sup>

The amendment, pushed by Senators Russell Feingold (D-WI), Charles Grassley (R-IA), and Tom Harkin (D-IA), passed quickly in the Senate by voice vote on September 19, 2001.<sup>221</sup> The amendment then went to the House-Senate Conference Committee, and a compromised version was subsequently approved.<sup>222</sup> Though the amendment will only be effective through June 30, 2002, rather than through September 30, 2005, the original date proposed, the bird-shipping lobby will likely try to make the legislation permanent.<sup>223</sup>

#### D. *The Puppy Protection Act*

Senators Rick Santorum (R-PA) and Richard Durbin (D-IL) introduced the Puppy Protection Act, an amendment to the Animal Welfare Act, to address the widespread suffering that occurs from unsanitary and unhumane conditions in "puppy mills."<sup>224</sup> The amendment, which currently has twenty-five co-sponsors, recognizes that puppies and adults in puppy mills suffer from, among other things, lack of protection from the elements, infestation from rodents and insects, overbreeding, lack of proper veterinary care, and lack of socialization with humans.<sup>225</sup> Females are bred too young, often at the time of their first

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

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

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> The Humane Society of the United States, *Senate Votes to Treat Chicks as "Mail Matter,"* 163 HUMANELines Newsltr. (Sept. 26, 2001).

<sup>222</sup> The Humane Society of the United States, *Update on Baby Chicks in the Mail,* 169 HUMANELines Newsltr. (Nov. 7, 2001).

<sup>223</sup> *Id.*

<sup>224</sup> Sen. Res. 1478, 107th Cong. § 2 (2001). The term "puppy mill" refers to a facility that continuously breeds female dogs, and houses the females and puppies in substandard conditions.

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

estrus.<sup>226</sup> Puppies and adults tend to suffer from disease due to overcrowding and inbreeding, and often do not live long or healthy lives.<sup>227</sup> In addition, unwanted animals are often killed.<sup>228</sup>

The Puppy Protection Act seeks to rectify these problems by mandating that female dogs be at least one year old before they are bred, and by creating a mandatory resting period between litters.<sup>229</sup> The Act designates that females would not be bred more than three times in a twenty-four month period.<sup>230</sup> The Act would also develop a standard, based on recommendations from animal welfare and behavior experts, for socialization of the dogs.<sup>231</sup> In addition, the Act would amend the AWA by providing civil and criminal penalties for violators.<sup>232</sup> Penalties would be imposed on licensed dealers, exhibitors, and operators of auctions after three violations of the Act within any eight year period.<sup>233</sup> After notice and a hearing, violators of the "rules, regulations, or standards governing the humane handling, transportation veterinary care, housing, breeding, socialization, feeding, watering, or other humane treatment of animals" shall have their licenses revoked, unless a written finding is made by the Secretary of the USDA that the violations were minor and inadvertent, "that the violations did not pose a threat to animals, or that revocation is inappropriate for another good cause."<sup>234</sup> Persons who fail to obey an order by the Secretary to cease their actions can be liable for a fine of up to \$1,500 for each day and each violation, which is the same penalty that is provided by the current provision of the AWA.<sup>235</sup> Under the new rule, a violator who fails to cease his actions after sixty days would be subject to imprisonment for not more than one year, or fined not more than \$2,500, or both.<sup>236</sup>

This amendment has created a great deal of controversy, even among those who seek to protect animals, namely because of its definition of "breeders." Groups such as the American Kennel Club<sup>237</sup> and the National Animal Interest Alliance,<sup>238</sup> interpret the amendment as regulating even one-time breeders, and fear that government intrusion

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<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* §§ 2-3.

<sup>230</sup> *Id.* § 3.

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

<sup>232</sup> *Id.* § 4.

<sup>233</sup> *Id.* § 3.

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

<sup>235</sup> *Id.* § 4.

<sup>236</sup> *Id.*

<sup>237</sup> American Kennel Club, *The Puppy Protection Act: Congress Attempts to Regulate Dog Breeding* <<http://www.akc.org/love/dip/legislat/puppyprotectionact.cfm>> (accessed Feb. 4, 2002).

<sup>238</sup> National Animal Interest Alliance, *NAIA Action Alert: Letters Needed in Opposition to the Puppy Protection Act* <[http://www.naionline.org/body/articles/archives/puppy\\_alert.htm](http://www.naionline.org/body/articles/archives/puppy_alert.htm)> (accessed Feb. 4, 2002).

into all dog breeding will result in a lowering, rather than a raising, of standards.<sup>239</sup> The opposition feels that engineered standards for socialization could be too rigid and too reflective of true working socialization techniques, and that any deviation would result in a violation.<sup>240</sup> In addition, the opposition believes that this amendment would take USDA inspectors away from their jobs in investigating “puppy mills” and put them into roles of ensuring that the 300,000 licensed breeders in the United States are complying with the amendment.<sup>241</sup>

Those in support of the amendment, such as the HSUS<sup>242</sup> and the Doris Day Animal League,<sup>243</sup> believe that the term “breeders,” as defined in the amendment, covers *all* manner of breeders.<sup>244</sup> Supporters of the amendment feel that closing down puppy mills and providing humane breeding are such important issues that they trump any small governmental intrusion potentially faced by “responsible” breeders.<sup>245</sup>

The Senate adopted the Puppy Protection Act as an amendment to the Senate Farm Bill on February 13, 2002.<sup>246</sup> However, the House version of the Farm Bill, H.R. 2646, does not contain the amendment.<sup>247</sup> Thus, the amendment’s fate lies in the hands of representatives and senators, working out the discrepancies between the two versions of the Farm Bill in the House-Senate Conference Committee.<sup>248</sup>

#### *E. The Pet Safety and Protection Act*

The Pet Safety and Protection Act, S. 668, was introduced by Senator Daniel Akaka (D-HI), to enable regulations to govern the supply of dogs and cats to research facilities.<sup>249</sup> Senators Akaka, Bob Smith (D-NH) and Carl Levin (D-MI) are the Act’s only co-sponsors.<sup>250</sup>

Under the Act, research facilities would be permitted to use dogs and cats for research or educational purposes only if the animals were obtained from licensed breeders, publicly owned and registered pounds

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<sup>239</sup> *Id.*

<sup>240</sup> American Kennel Club, *supra* n. 237.

<sup>241</sup> *Id.*

<sup>242</sup> The Humane Society of the United States, *Save the Puppy Protection Act* <<http://www.hsus.org/ace/12606>> (accessed Mar. 7, 2002).

<sup>243</sup> Doris Day Animal League, *USDA’s Failure to Regulate Puppy Mills is Illegal, According to Judge: Why Doris Day Animal League Sued the USDA* <<http://www.ddal.org/currentcampaignpuppy.html>> (last updated Feb. 2002).

<sup>244</sup> *Id.*

<sup>245</sup> American Society for the Prevention of Cruelty to Animals, *Hot Topics: Support the Puppy Mill Protection Act* <<http://www.pgaa.com/pupppymillbill.html>> (accessed Feb. 4, 2002).

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

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Bill Summary & Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bd-querytr/D?d107:1:/temp/~bdIis8:@@>> (accessed Feb. 4, 2002).

<sup>250</sup> *Id.*

or shelters, "persons" who have raised, bred, or owned a dog or cat for more than one year, or research facilities licensed by the USDA.<sup>251</sup> The Act defines "person" as "any individual, partnership, firm, joint stock company, corporation, association, trust, estate, pound, shelter, or other legal entity."<sup>252</sup> Research facilities found to be in violation of the Act, and deemed to have accepted a dog or cat from a person not described by the Act, would be subject to a penalty of \$1,000 for each violation, in addition to any other applicable penalty.<sup>253</sup> The Act clearly states that no person described by the Act is required to donate or sell a dog or cat to a research facility.<sup>254</sup>

The Act was created in response to class B dealers, who steal pets from people's yards or farms, answer "free to good home" ads, pose as loving owners, and falsify information to cover up the animals' origin when selling pets to research facilities.<sup>255</sup> These dealers frequently violate the AWA, which requires accurate records on the acquisition and disposition of the animals sold to researchers.<sup>256</sup> Class B dealers often leave animals in cages outside, exposing them to the elements, and fail to give them adequate food and water prior to their sale.<sup>257</sup> Previous attempts by Congress to stop pet theft have failed, and many advocates of the Act believe it to be more comprehensive and easier to regulate than earlier efforts.<sup>258</sup> The AWA of 1966 was meant to, among other things, curb the practice of pet theft.<sup>259</sup> However, this goal was thwarted because the USDA granted licenses to class B dealers, and the price paid for the animals increased.<sup>260</sup> A 1990 bill attempted to document the identities of the sources of animals from class B dealers;<sup>261</sup> however, the sources could rarely be verified.<sup>262</sup> The amendment seeks to rectify the problems faced in both the 1966 and 1990 legislation by banning class B dealership altogether.

S. 668 was read twice by the Senate, and has been referred to the Committee on Agriculture, Nutrition and Forestry.<sup>263</sup> There has been no action on the bill since its referral.

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<sup>251</sup> Sen. Res. 668, 107th Cong. § 2 (2001).

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* § s(f).

<sup>255</sup> United States Department of Agriculture, *Animal Welfare Report, Fiscal Year 1997: A Legislative and Regulatory History* <<http://www.aphis.usda.gov/oa/pubs/awrpt/awhistory.html>> (accessed Feb. 4, 2002).

<sup>256</sup> Society for Animal Protective Legislation, *Pet Safety and Protection Act of 2001* <<http://www.sapolnline.org/Legislation/petsafety.htm>> (accessed Feb. 4, 2002).

<sup>257</sup> *Id.*

<sup>258</sup> Ark Online, *Pet Theft in America* <[http://www.arkonline.com/pet\\_theft\\_bill.html](http://www.arkonline.com/pet_theft_bill.html)> (accessed Feb. 4, 2002).

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> Pub. L. No. 101-624 (1990).

<sup>262</sup> *Id.*

<sup>263</sup> The Humane Society of the United States, *supra* n. 186.

### F. *Animal Cruelty Amendment to the Juvenile Justice Bill*

Representative Dennis Kucinich (D-OH) introduced House Resolution 1900, an amendment to the Juvenile Crime Control and Delinquency Prevention Act. This amendment would provide grants to eligible states who wish to carry out projects designed to prevent juvenile delinquency, including programs designed to prevent animal cruelty by counseling juveniles who commit animal cruelty offenses.<sup>264</sup> The Amendment also encourages “partnerships among law enforcement agencies, animal control officers, social services agencies, and school officials.”<sup>265</sup>

This Amendment was spurred by the recent attention given to the documented link between juvenile violence towards animals and corresponding violence to humans.<sup>266</sup> Jeffrey Dahmer, Ted Bundy, and the Boston Strangler are examples of violent offenders who had histories of juvenile violence toward animals.<sup>267</sup> The connection between animal abuse and human violence is so strong that for years the FBI has used this correlation in profiling serial killers.<sup>268</sup> In addition, the American Psychiatric Association lists animal cruelty by children as a major criterion for a diagnosis of a conduct disorder.<sup>269</sup> Because many juveniles who abuse animals are also victims of abuse, some municipalities have created successful programs partnering police officers, animal control officers, and child protective services.<sup>270</sup>

While the amendment only has two co-sponsors, there is no vocal opposition to this specific portion of the Bill. The Amendment passed in the House on September 20, 2001, and is currently awaiting consideration by the Senate.<sup>271</sup>

### G. *The Arctic National Wildlife Refuge*

The proposal to drill for oil in the Arctic National Wildlife Refuge (ANWR) in Alaska has generated heated debate among public interest groups and citizens, and was even used as a platform in the 2000 presidential election.<sup>272</sup> The debate is not over, and Congress is expected to vote on the fate of the refuge sometime this year. Two different bills have been introduced in both the House and the Senate dealing with

<sup>264</sup> H.R. Res. 1900, 107th Cong. § 241(a)(20) (2001).

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

<sup>266</sup> Frank R. Ascione, *Juvenile Justice Bulletin: Animal Abuse and Youth Violence* <[http://www.ncjrs.org/html/ojjdp/jjbul2001\\_9\\_2/contents.html](http://www.ncjrs.org/html/ojjdp/jjbul2001_9_2/contents.html)> (Sept. 2001).

<sup>267</sup> Statement of Congressman Dennis Kucinich, *On The Juvenile Crime Control And Delinquency Prevention Act: Bill Includes Kucinich Language on Animal Cruelty* <<http://www.house.gov/kucinich/press/pr010801a.htm>> (Aug. 1, 2001).

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> Erin Harty, *Abuse Isn't Child's Play* <<http://www.vetcentric.com/magazine/magazineArticle.cfm?ARTICLEID=1625>> (Dec. 10, 2001).

<sup>271</sup> The Humane Society of the United States, *supra* n. 186.

<sup>272</sup> Yereth Rosen, *Arctic Refuge Debate Colors Campaign in Alaska* <<http://members.aol.com/readmenownet/gore16.html>> (Sept. 25, 2000).



ANWR. The Arctic Coastal Plain Domestic Security Act, H.R. 39/S. 388, proposes a plan to drill for oil in ANWR.<sup>273</sup> The Act has seventy-seven co-sponsors in the House and twenty co-sponsors in the Senate.<sup>274</sup> In contrast, the Arctic Wilderness Act, H.R. 770/S. 411, seeks to preserve ANWR as wilderness.<sup>275</sup> The Arctic Wilderness Act has one hundred fifty co-sponsors in the house and twenty-six co-sponsors in the Senate.<sup>276</sup>

Advocates for oil drilling in ANWR claim the need to create jobs, protect national security, and decrease dependency on foreign oil supplies.<sup>277</sup> The proposed bills to allow drilling in ANWR include plans to drill and lay pipe in an area not to exceed 5,760 acres, and to employ environmentally sound methods to protect the area from damage caused by spills.<sup>278</sup> The plan includes a provision that allows drilling areas to be closed on a seasonal basis, so as not to interfere with caribou calving areas, and the breeding and birthing of other wildlife species.<sup>279</sup> Proponents of the plan include Vice President Dick Cheney, who feels it would be "foolish in the extreme" not to "increase domestic oil sources,"<sup>280</sup> and Interior Secretary Gale Norton, who called the measure "necessary for security and also to enhance economic recovery."<sup>281</sup>

Opponents to drilling in ANWR, however, argue that the costs of drilling would outweigh the benefits since drilling would only yield a six month supply of oil, which would not be available for use for at least ten years.<sup>282</sup> In addition, opponents fear that the oil extraction will involve the construction of hundreds of miles of roads and pipelines, living quarters for thousands of workers, oil flares competing in the night sky with the Northern Lights, and the possibility of oil and toxic chemical spills.<sup>283</sup> Further, ANWR has been deemed "the most significant on-land polar bear denning habitat in the U.S."<sup>284</sup> For this reason, drilling in the refuge could violate the Agreement on Conservation of Polar Bears, a treaty between the U.S., Canada, Denmark, Nor-

<sup>273</sup> H.R. Res. 39, 107th Cong. (2001); Sen. Res. 388, 107th Cong. (2001).

<sup>274</sup> *Bill Summary and Status for the 107th Congress* <<http://thomas.loc.gov>> (accessed Feb. 20, 2002).

<sup>275</sup> H.R. Res. 770, 107th Cong. (2001); Sen. Res. 411, 107th Cong. (2001).

<sup>276</sup> *Bill Summary*, *supra* n. 274.

<sup>277</sup> Brad Knickerbocker, *Analysis: National Security is Bush's New Excuse to Drill Alaskan National Wildlife Refuge*, *Christian Science Monitor* <<http://www.nandotimes.com/nation/story/181168-p1750083c.html>> (Nov. 27, 2001).

<sup>278</sup> H.R. Res. 39, 107th Cong. § 1 (2001); Sen. Res. 388, 107th Cong. § 1 (2001).

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

<sup>280</sup> *Supra*, n. 277.

<sup>281</sup> *Id.*

<sup>282</sup> The Humane Society, *Help Bush Break His Promise: Stop Oil Drilling in the Arctic National Wildlife Refuge* <<http://www.hsus.org/whatnew/arcticdrilling040501.html>> (Apr. 24, 2001).

<sup>283</sup> *Id.*

<sup>284</sup> The Wilderness Society, *15 Most Endangered Wetlands: Arctic National Wildlife Refuge Tops List of America's Most Endangered Wetlands* <<http://www.wilderness.org/newsroom/15most/2001/arctic.htm>> (Apr. 20, 2001).

way, and the former Soviet States that calls for, among other things, a ban on the disruption of polar bear denning sites.<sup>285</sup> Other wildlife in the area, such as grizzly bears, wolves, musk oxen, snow geese, and caribou—and their habitat—could also be detrimentally affected by drilling.<sup>286</sup>

The proposed bills to preserve ANWR as a wilderness area would protect the wilderness values of the 8.9 million acre area set aside by President Eisenhower in 1960 “for the purpose of preserving unique wildlife, wilderness and recreational values.”<sup>287</sup> Under these bills, Congress would work with Canada, because it has already established a conservation program in its territory for caribou, which migrate across the international boundary between Canada and the ANWR.<sup>288</sup> In addition, the bill seeks to preserve ANWR as pristine habitat and a national treasure for present and future generations of Americans.<sup>289</sup>

While the race to drill or preserve ANWR is a close one, the potential outcome favors protection of the refuge. Polls taken by the New York Times/CBS News, the Wall Street Journal/NBC, the Associated Press, and the Mellman Research Group & Bellwether Research for The Wilderness Society show that a majority of the American public favors preserving the Arctic National Wildlife Refuge as a wilderness area.<sup>290</sup> H.R. 39 and S. 388 are currently in the House and Senate Committees on Natural Resources.<sup>291</sup> Similarly, H.R. 770 and S. 411 are currently in the House Committee on Resources<sup>292</sup> and the Senate Committee on Environment and Public Works.<sup>293</sup>

#### H. The Whaling Resolution

In response to continued whale hunts in Japan and Norway under the guise of science or research, Representative William Delahunt (D-MA) and Senator John Kerry (D-MA) proposed a resolution to express

<sup>285</sup> *Agreement on Conservation of Polar Bears*, art. II (Nov. 15, 1973) <<http://sedac.ciesin.org/pidb/texts/polar.bears.1973.html>>.

<sup>286</sup> The Wilderness Society, *supra* n. 284.

<sup>287</sup> H.R. Res. 770, 107th Cong. (2001).

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

<sup>289</sup> *Id.*

<sup>290</sup> The Wilderness Society, *supra* n. 284.

<sup>291</sup> *Bill Summary and Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquerytr/D?d107:1:/temp/~bdkjRV:@@L&summ2=m&|/bss/d107query.html>> (accessed Mar. 7, 2002); *Bill Summary and Status for the 107th Congress*, <<http://thomas.loc.gov/cgi-bin/bdquerytr/D?d107:1:/temp/~bdDjRF:@@L&summ2=m|/bss/d107query.html>> (accessed Mar. 7, 2002).

<sup>292</sup> *Bill Summary and Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquerytr/D?d107:1:/temp/~bdT2YD:@@L&summ2=m|/bss/d107query.html>> (accessed Mar. 7, 2002); *Bill Summary and Status for the 107th Congress*, <<http://thomas.loc.gov/cgi-bin/bdquerytr/D?d107:1:/temp/~bdUEx7:@@L&summ2=m|/bss/d107query.html>> (accessed Mar. 7, 2002).

<sup>293</sup> *Id.*

the sense of Congress that the United States should reaffirm its opposition to the lethal hunting of whales for scientific purposes.<sup>294</sup>

The International Whaling Commission (IWC) was created in 1946 for the conservation of whale stocks.<sup>295</sup> Though the IWC attempted to regulate whaling, stocks continued to decline.<sup>296</sup> Consequently, the IWC imposed a moratorium on whaling in 1982.<sup>297</sup> Despite the moratorium and protests from other members of the Commission, Japan and Norway have continued their hunts, claiming scientific exemptions.<sup>298</sup>

Due to a yearly increase in the amount of whales taken under a scientific "curtain," and the United States' firm anti-whaling stance in the past, these resolutions are likely to pass in both the House and the Senate.<sup>299</sup> The resolutions, which contain similar language, have seventy-seven co-sponsors in the House and nineteen in the Senate.<sup>300</sup> They are currently before the House Committee on International Relations and the Senate Committee on Foreign Relations.<sup>301</sup> Once adopted, the final resolution will guide the United States at the 53rd meeting of the International Whaling Commission meeting in May 2002.<sup>302</sup>

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<sup>294</sup> H. R. Con. Res. 180, 107th Cong. (2001); Sen. Res. 121, 107th Cong. (2001).

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Bill Summary & Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bd-querytr/z?d107:HC00180:@@P>> (accessed Apr. 4, 2002).

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

<sup>302</sup> Greenpeace, *Increasing Environmental Threats to Whale Populations Exposed as IWC is Overshadowed by Japanese Vote Buying* <<http://whales.greenpeace.org/news/27july2001.html>> (accessed Jul. 27, 2001).