

# 2015 STATE LEGISLATIVE REVIEW

By  
Malorie Sneed & Jessica Brockway\*

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## I. INTRODUCTION

The past year's state legislative sessions and court dockets bore witness to a wide variety of initiatives concerning animal welfare and animal issues more generally. The increasing prevalence of ag-gag bills continued in 2015, as Colorado attempted to pass a mandatory reporting bill<sup>1</sup> and North Carolina passed its own ag-gag bill that applied to all businesses, not just agricultural facilities, over the governor's veto.<sup>2</sup> Animal welfare advocates had reason to celebrate this year, however, when the district court of Idaho overturned its ag-gag

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\* © Malorie Sneed & Jessica Brockway 2016. Malorie Sneed graduated from New College of Florida with a degree in Political Science and is a 2017 J.D. candidate at Lewis & Clark. She would like to thank Brendan and her Greyhound, Venus, for their support throughout her law school journey, as well as the editorial board of *Animal Law* for their assistance. Jessica Brockway is a 2016 J.D. candidate in the Animal Law Program at Lewis & Clark Law School. She previously interned with Farm Sanctuary in their Shelter Department in Watkins Glen, New York. While in law school, she has been the Farm Animal Intern for the Animal Welfare Institute and a legal extern for Compassion Over Killing and Mercy For Animals. She would like to thank this year's Editors-in-Chief Colby Stewart and Audrey Clungeon and Managing Editor Raj Reddy for their help in this process.

<sup>1</sup> Marianne Goodland, *Jokes, then Approval for Brown Nomination*, J.-Advoc., [http://www.journal-advocate.com/sterling-local\\_news/ci\\_27525487/jokes-then-approval-brown-nomination](http://www.journal-advocate.com/sterling-local_news/ci_27525487/jokes-then-approval-brown-nomination) [https://perma.cc/RNY5-G586] (Feb. 14, 2015) (accessed Jan. 8, 2016).

<sup>2</sup> Pamela Wolf, *Vetoed NC Property Protection Bill Becomes Law Amid Concerns Whistleblowers May Be Chilled*, EMP. L. DAILY, <http://www.employmentlawdaily.com/index.php/news/vetoed-nc-property-protection-bill-becomes-law-amid-concerns-whistleblowers-may-be-chilled/> [https://perma.cc/3FWY-MAPU] (accessed Feb. 18, 2016).

bill on constitutional grounds.<sup>3</sup> Tennessee, in amending its “Good Samaritan” law to extend coverage to animals trapped in hot cars, has paved the way for other states to expand their Good Samaritan laws in similar fashion, allowing citizens to break and enter cars to rescue pets in danger of overheating.<sup>4</sup> Farm animals were the subjects of a ballot initiative in Massachusetts, where activists gathered signatures to place a measure on the 2016 ballot that would replicate the protections of California’s Proposition 2 in the state.<sup>5</sup> Finally, the Maine and Wisconsin legislatures addressed the exotic animal situations in their states with bills that seek to increase the difficulty of obtaining exotic animal permits and to ban the ownership of exotic animals altogether, respectively.<sup>6</sup>

## II. AG-GAG BILLS: VETO, PASSAGE, AND OVERTURN

The 2015 state legislative sessions saw important developments relating to ag-gag bills, particularly in North Carolina and Idaho. According to Stephen Wells, Executive Director of the Animal Legal Defense Fund (ALDF), ag-gag bills “protect the agricultural industry from scrutiny” and “attempt to ‘gag’ animal activists and other law-abiding citizens from exposing chronic and illegal animal abuse.”<sup>7</sup> These laws “criminaliz[e] acts related to investigating the day-to-day activities of industrial farms, including the recording, possession or distribution of photos, video and/or audio at a farm.”<sup>8</sup> In 2014, four state legislatures attempted to pass ag-gag bills. The Idaho, Indiana, and Tennessee legislatures succeeded in their efforts.<sup>9</sup> The Idaho law

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<sup>3</sup> Animal Legal Def. Fund v. Otter, 118 F. Supp. 3d 1195, 1209–10 (D. Idaho 2015).

<sup>4</sup> Tony Casey, *Greenville State Representative Hawk Extends Good Samaritan Law to Car-Bound Animals*, JOHNSON CITY PRESS, <http://www.johnsoncitypress.com/Local/2015/06/13/Greenville-State-Representative-Hawk-extends-Good-Samaritan-law-to-car-bound-areas-1.html> [https://perma.cc/QZS7-73SQ] (June 14, 2015) (accessed Feb. 7, 2016).

<sup>5</sup> Joshua Miller, *Animal Welfare Vote May Break New Ground*, BOS. GLOBE, <https://www.bostonglobe.com/metro/2015/11/01/humane-society-looks-mass-for-next-animal-ballot-push/zVctCseIIZwgPjB9lvuFSN/story.html> [https://perma.cc/HMP3-G4KU] (Nov. 1, 2015) (accessed Feb. 19, 2016); Ballot Initiative, An Act to Prevent Cruelty to Farm Animals (Mass. 2016), <http://www.mass.gov/ago/docs/government/2015-petitions/15-11.pdf> [https://perma.cc/RZV9-D66D] (accessed May 18, 2016) (“The purpose of this Act is to prevent animal cruelty by phasing out extreme methods of farm animal confinement.”).

<sup>6</sup> ME. REV. STAT. ANN. tit. 12, § 12152 (2015); S.B. 241, 2015–16 Reg. Sess. (Wis. 2015), <https://docs.legis.wisconsin.gov/2015/related/proposals/sb241> [https://perma.cc/Y77U-CRVZ] (accessed Feb. 14, 2016).

<sup>7</sup> Stephen Wells, *Legally Brief: Taking Out the Gag in Ag-Gag Legislation*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/blog/legally-brief-taking-out-the-gag-in-ag-gag-legislation/> [https://perma.cc/2HJ9-8YUQ] (Jan. 30, 2014) (accessed Jan. 7, 2016).

<sup>8</sup> *What Is Ag-Gag Legislation?*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/animal-cruelty/factory-farms/what-ag-gag-legislation> [https://perma.cc/D7PB-Z73W] (2016) (accessed Jan. 7, 2016).

<sup>9</sup> Aaron Johnson, *2014 State Legislative Review*, 21 ANIMAL L. 383, 396 (2015).

was soon ruled unconstitutional, and among five other states that attempted to pass similar legislation in 2015, two were successful.<sup>10</sup>

### A. Colorado

Colorado's Senate Bill 42, introduced by Rep. Jon Becker and Sen. Jerry Sonnenberg on January 7, 2015, would have required mandatory reporting of animal abuse within forty-eight hours of its discovery.<sup>11</sup> The bill was Sen. Sonnenberg's second attempt to pass a mandatory reporting measure for animal abuse.<sup>12</sup> Specifically, it would have required reporting for "animal abandonment, mistreatment, or neglect" by anyone who witnesses or has knowledge of the abuse.<sup>13</sup> Although mandatory reporting requirements may appear to be motivated by animal welfare concerns, the forty-eight hour time limit could actually do more harm than good to overall prevention of animal abuse on agricultural facilities. This is primarily because undercover investigators would face significant difficulties in establishing a pattern of abuse at a particular facility if required to report any single act of animal cruelty within forty-eight hours.<sup>14</sup> With such a limited time frame in which to report the abuse, investigators cannot fully demonstrate that the abuse is systemic and not merely an isolated incident.

One of the bill's sponsors, Sen. Sonnenberg, claimed that SB 42 would benefit animals, yet it would have required employees to identify themselves when reporting animal cruelty.<sup>15</sup> Such a requirement would create a strong disincentive for employees to speak out when they witness cruelty, as they may be afraid of losing their jobs if they report abuse to law enforcement.<sup>16</sup> It also would have transferred all responsibility for an incident of cruelty from the facility owners to the predominantly "poor, low-wage workers who are caught on camera—workers who are quickly scapegoated, fired, and replaced with others who will continue the same cruel and illegal conduct often directed by their supervisors."<sup>17</sup> Additionally, the bill would have established fines for false reports, which likely would have had a chilling effect on the reporting of animal cruelty as average citizens struggle to determine whether the behavior they witness is, in fact, illegal "abandonment, mistreatment, or neglect."<sup>18</sup> Sen. Sonnenberg withdrew SB 42 in early

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<sup>10</sup> *Ag-gag Bills Continue to Flourish in 2015*, NAT'L ANTI-VIVISECTION SOC'Y, <http://www.navs.org/news/ag-gag-bills-continue-to-flourish-in-2015> [https://perma.cc/7H9K-TTXR] (2015) (accessed Jan. 7, 2016).

<sup>11</sup> S.B. 42, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015).

<sup>12</sup> Goodland, *supra* note 1.

<sup>13</sup> Colo. S.B. 42 § 1(1)–(2).

<sup>14</sup> Wells, *supra* note 7.

<sup>15</sup> Justin Marceau & Nancy Leong, *Proposed Bill Would Lead to More Animal Abuse, Not Less*, THE DENVER POST, [http://www.denverpost.com/ci\\_27381708/proposed-bill-will-lead-more-animal-abuse-not](http://www.denverpost.com/ci_27381708/proposed-bill-will-lead-more-animal-abuse-not) [https://perma.cc/Q9UX-SC2F] (Jan. 23, 2015) (accessed Jan. 8, 2016).

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

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

<sup>18</sup> Colo. S.B. 42 § 1(2); Wells, *supra* note 7.

February, noting that “he did not have all of the agricultural groups ‘on the same page.’”<sup>19</sup> The bill then died at the end of Colorado’s legislative session.<sup>20</sup> Efforts by People for the Ethical Treatment of Animals (PETA) may also have helped table the bill. PETA issued a statement claiming responsibility for thousands of emails and calls to the capitol in opposition to SB 42.<sup>21</sup> PETA rallied its supporters by characterizing the ag-gag bill as an obstacle for eyewitness investigators in documenting patterns of abuse necessary to prosecute animal cruelty.<sup>22</sup>

### B. North Carolina

The ag-gag bill in North Carolina passed the House and Senate, but was defeated by Governor McCrory’s veto.<sup>23</sup> “While I support the purpose of this bill,” Gov. McCrory said, “I believe it does not adequately protect or give clear guidance to honest employees who uncover criminal activity. I am concerned that subjecting these employees to potential civil penalties will create an environment that discourages them from reporting illegal activities.”<sup>24</sup> In what proved to be a short-lived victory for animals, the North Carolina legislature overrode the veto.<sup>25</sup> In both the House and Senate, the bill was enacted over the Governor’s veto by a large majority: the House voted 79–36 and the Senate voted 33–15.<sup>26</sup> The strong support for the bill is not entirely surprising considering North Carolina is one of the top hog producing states in the country.<sup>27</sup>

The new law, which took effect January 1, 2016,<sup>28</sup> comes after two prior agriculture-focused bills failed to become law, prompting lawmakers to broaden the law to include all businesses.<sup>29</sup> The wording of the law does not even mention agricultural facilities, but instead says, “[a]ny person who intentionally gains access to the nonpublic ar-

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<sup>19</sup> Goodland, *supra* note 1.

<sup>20</sup> *Ag-gag Bills Continue to Flourish in 2015*, *supra* note 10.

<sup>21</sup> Goodland, *supra* note 1.

<sup>22</sup> *Id.*

<sup>23</sup> Craig Jarvis, *McCrory Vetoes Workplace Bill*, NEWS & OBSERVER, <http://www.newsobserver.com/news/politics-government/article22605054.html> [https://perma.cc/S7SA-RPRF] (May 29, 2015) (accessed Feb. 17, 2016).

<sup>24</sup> *North Carolina Governor Pat McCrory Vetoes ‘Ag-Gag’ Bill*, ABC 11, <http://abc11.com/politics/governor-mccrory-vetoes-ag-gag-bill/754427/> [https://perma.cc/56UB-XEE9] (May 29, 2015) (accessed Feb. 23, 2016).

<sup>25</sup> Wolf, *supra* note 2.

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

<sup>27</sup> *Hog and Pig Farming: A \$22.5 Billion Industry, up 25 Percent Since 2007*, U.S. DEPT. OF AGRIC., [http://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/Highlights/Hog\\_and\\_Pig\\_Farming/#top\\_states](http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Hog_and_Pig_Farming/#top_states) [https://perma.cc/RJ2L-KXDN] (updated Mar. 19, 2015) (accessed Feb. 18, 2016).

<sup>28</sup> Craig Jarvis, *Animal Welfare, Whistleblower Groups Sue Over N.C. Workplace Bill*, CHARLOTTE OBSERVER, <http://www.charlotteobserver.com/news/politics-government/article54635715.html> [https://perma.cc/XT8S-MFKU] (Jan. 14, 2016) (accessed Jan. 18, 2016) [hereinafter Jarvis, *Whistleblower Groups Sue*].

<sup>29</sup> Jarvis, *supra* note 23.

eas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained."<sup>30</sup> Particularly relevant to undercover investigators, the law defines a person exceeding their authority as one who

Intentionally enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization records images or sound occurring within an employer's premises and uses the recording to breach the person's duty of loyalty to the employer.<sup>31</sup>

This definition clearly applies to undercover investigators trying to uncover animal cruelty at agricultural facilities. These investigators gain employment with the intent to record sound and audio footage and then release this information to the public, presumably violating their duty of loyalty to the employer. However, because the law applies to all businesses and not just agricultural facilities, animal protection groups are not the only ones in opposition to the law.<sup>32</sup> Particularly, the American Association of Retired Persons (AARP) fought the law because under it nursing home workers can be sued for reporting elder abuse.<sup>33</sup> This is because the law also defines people to be exceeding their authority when they "[k]nowingly or intentionally plac[e] on the employer's premises an unattended camera or electronic surveillance device and us[e] that device to record images or data."<sup>34</sup> Therefore, if an employee (who originally gained employment not to conduct an undercover investigation but to work) observes repeated unlawful behavior (such as elder or animal abuse) and then decides to document said abuse, they could be prosecuted under the law.

Despite the law's passage, groups continue to fight against it. A coalition of groups have challenged the law in federal court claiming it "violates provisions of the state and U.S. constitutions, including protections of free speech, right to petition, equal protection and due process, and also that the law is too vague."<sup>35</sup> The groups suing include People for the Ethical Treatment of Animals (PETA), Center for Food Safety (CFS), Animal Legal Defense Fund (ALDF), Farm Sanctuary,

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<sup>30</sup> 2015 N.C. Sess. Laws 50, <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H405v5.pdf> [<https://perma.cc/BP77-NXAR>] (accessed Mar. 22, 2016).

<sup>31</sup> *Id.*

<sup>32</sup> Jarvis, *supra* note 23 ("Several of the country's leading animal welfare organizations fought to defeat the bill and then to encourage a veto, including a \$50,000 TV ad campaign by the Humane Society of the United States.")

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

<sup>34</sup> 2015 N.C. Sess. Laws 50.

<sup>35</sup> Jarvis, *Whistleblower Groups Sue*, *supra* note 28; Complaint for Declaratory and Injunctive Relief Concerning the Constitutionality of a State Statute at 3–5, *People for the Ethical Treatment of Animals, Inc. v. Cooper*, No. 16-cv-25 (M.D. N.C. Jan. 13, 2016), <http://aldf.org/wp-content/uploads/2016/01/NC-greensboro-case-no-16-cv-25.pdf> [<https://perma.cc/972J-EMPJ>] (accessed Mar. 22, 2016).

Food & Water Watch, and Government Accountability Project (GAP).<sup>36</sup> These groups allege standing by claiming that they have conducted undercover investigations or used information from these investigations to further their mission and now fear liability if they do so in the future, and that the law infringes on their desired form of speech.<sup>37</sup>

### C. Idaho

The Idaho ag-gag law came about as a result of a Mercy For Animals (MFA) investigation of a dairy facility.<sup>38</sup> The video documented “workers using a moving tractor to drag a cow on the floor by a chain attached to her neck and workers repeatedly beating, kicking, and jumping on cows.”<sup>39</sup> In response to the negative publicity generated by the video, the Idaho Dairymen’s Association drafted and sponsored a bill that criminalized undercover investigations like the one done by MFA. The Idaho legislature quickly passed the bill, and “[i]t was signed by Governor Otter on February 14, 2014.”<sup>40</sup>

The Animal Legal Defense Fund (ALDF) challenged the law as unconstitutional,<sup>41</sup> and on August 3, 2015, the Idaho district court agreed.<sup>42</sup> The court struck down the law, finding that it “violates the First Amendment right to free speech [as well as] the Equal Protection Clause because it was motivated in substantial part by animus towards animal welfare groups, and because it impinges on free speech, a fundamental right.”<sup>43</sup> Though the Dairymen’s Association will be appealing the ruling,<sup>44</sup> the holding could mean that ag-gag laws in other states also would not pass constitutional muster.

## III. COMPANION ANIMALS

### A. Tennessee

Tennessee passed the first and only “Good Samaritan” law in the nation that extends to animals trapped in hot cars.<sup>45</sup> House Bill 537 allows any citizen to forcibly enter a car to rescue an animal in danger of overheating, as it “adds animals to the existing procedure that con-

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<sup>36</sup> Complaint for Declaratory and Injunctive Relief, *supra* note 35, at 1.

<sup>37</sup> *Id.* at 6–21.

<sup>38</sup> Animal Legal Defense Fund v. Otter, No. 1:14-cv-00104-BLW, slip op. at 1–2 (D. Idaho Aug. 3, 2015).

<sup>39</sup> *Id.* at 1; *Undercover Investigations*, MERCY FOR ANIMALS, <http://www.mercyforanimals.org/investigations> [<https://perma.cc/5NGL-JTKY>] (accessed Feb. 18, 2016).

<sup>40</sup> *Otter*, slip op. at 2; MERCY FOR ANIMALS, *supra* note 39.

<sup>41</sup> *Otter*, slip op. at 2–3; MERCY FOR ANIMALS, *supra* note 39.

<sup>42</sup> *Otter*, slip op. at 3.

<sup>43</sup> *Id.* at 8; MERCY FOR ANIMALS, *supra* note 39.

<sup>44</sup> Luke Runyon, *Judge Strikes down Idaho ‘Ag-Gag’ Law, Raising Questions for Other States*, NAT’L PUB. RADIO, <http://www.npr.org/sections/thesalt/2015/08/04/429345939/idaho-strikes-down-ag-gag-law-raising-questions-for-other-states> [<https://perma.cc/B6A4-GF35>] (Aug. 4, 2015) (accessed Feb. 18, 2016).

<sup>45</sup> Casey, *supra* note 4.

fers immunity from liability on a person for damage caused by breaking into a locked vehicle for the purpose of extracting a child in danger.”<sup>46</sup> Fifth District Representative David Hawk sponsored the bill in direct response to a Greenville, Tennessee incident in 2013 involving a pair of overheated dogs left in a car.<sup>47</sup> Hawk learned of the situation and found it “unacceptable” that one of the dogs had died an “agonizing and preventable death” before law enforcement or the local chapter of the Humane Society could arrive at the scene.<sup>48</sup> The other dog was in extremely poor shape but eventually recovered, and according to Hawk, the vehicle’s owners were being brought up on animal cruelty charges.<sup>49</sup>

Tennessee law already protects anyone who breaks into a hot car to save a child.<sup>50</sup> Sixteen other states provide civil liability protection only to law enforcement officers who rescue animals from locked cars.<sup>51</sup> In these states, only law enforcement officers are authorized to forcibly enter a car to help an animal, and civilians remain subject to possible criminal penalties as if there were no animal trapped inside the car.<sup>52</sup> Now, anyone in Tennessee can, if acting reasonably, break into a locked car to rescue an animal in distress without fear of a lawsuit.<sup>53</sup> Those who damage a car to rescue an animal in danger must still notify law enforcement prior to attempting the rescue and can use no more force than is necessary under the circumstances.<sup>54</sup> Mike Franklin, Chief of Staff of the Nashville Fire Department, discussed the parameters of the law: “If you act reasonably, as any reasonable person would respond, you will not be at fault to save a life.”<sup>55</sup>

In the wake of the tragic incident involving the overheated dogs, Hawk remembers asking, “What can be done so this circumstance

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<sup>46</sup> *H.B. 0537*, TENN. GEN. ASSEMB., <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0537&ga=109> [<https://perma.cc/MS9L-QFM8>] (accessed Feb. 18, 2016); 2015 Tenn. Pub. Acts 166 (to be codified at TENN. CODE ANN. § 29-34-209).

<sup>47</sup> Mahita Gajanan, *New Tennessee Law Allows People to Break into Cars to Save Animals*, THE GUARDIAN, <http://www.theguardian.com/us-news/2015/jul/09/tennessee-law-save-animals-cars> [<https://perma.cc/Z393-8P4X>] (July 9, 2015) (accessed Feb. 7, 2016).

<sup>48</sup> Casey, *supra* note 4.

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

<sup>50</sup> TENN. CODE ANN. § 29-34-209 (2014) (amended 2015).

<sup>51</sup> See Rebecca F. Wisch, *Table of State Laws that Protect Animals Left in Parked Vehicles*, ANIMAL LEGAL & HIST. CTR., <https://www.animallaw.info/topic/table-state-laws-protect-animals-left-parked-vehicles> [<https://perma.cc/4M4D-55YA>] (2015) (accessed Feb. 7, 2016) (listing the following states: Arizona, California, Delaware, Illinois, Maine, Maryland, Minnesota, Nevada, New Hampshire, New York, North Carolina, North Dakota, Rhode Island, South Dakota, Vermont, and Washington).

<sup>52</sup> *Id.*

<sup>53</sup> Najah Sherman, *New Tenn. Law Allows Good Samaritans to Save Dogs from Hot Cars*, WKRN-TV NASHVILLE, <http://wkrn.com/2015/07/01/new-tenn-law-allows-good-samaritans-to-save-dogs-from-hot-cars/> (July 1, 2015) (accessed Feb. 7, 2016).

<sup>54</sup> 2015 Tenn. Pub. Acts 166 (to be codified at TENN. CODE ANN. § 29-34-209).

<sup>55</sup> Sherman, *supra* note 53.

doesn't happen again?"<sup>56</sup> Nor was it an isolated event. Washington County-Johnson City Animal Shelter director Debbie Dobbs learned firsthand how difficult is it to reverse heat stroke in dogs when she responded to a rash of cases in 2014 where dogs were left in hot cars.<sup>57</sup> Outside of Tennessee, there is no reliable means of tracking the number of animals who die from heat exhaustion, but veterinarians estimate that several hundred animals perish in hot cars each year.<sup>58</sup>

The Tennessee legislature "plowed new ground," according to Hawk, who found that "there was nothing in any other state that even came close to being a provision that would allow someone to enter a vehicle with the intent to save an animal's life."<sup>59</sup> Tennessee has set a precedent by expanding the protection of its Good Samaritan law to animals, and Hawk said that other states have recognized the need to protect animals left in hot cars and plan to develop their own versions of the law.<sup>60</sup>

#### IV. BALLOT INITIATIVES

##### A. *Massachusetts*

According to the U. S. Department of Agriculture (USDA), 76.9% of egg-laying hens are housed in conventional cages<sup>61</sup> and 76.7% of breeding pigs are housed in total confinement.<sup>62</sup> A Massachusetts ballot initiative seeks to reduce these numbers by "mandat[ing] that, starting in 2022, Massachusetts and businesses produce and sell only eggs from cage-free hens; pork from pigs not raised in or born of a sow raised in a small crate; and veal from calves not raised in a very tight enclosure."<sup>63</sup> Citizens for Farm Animal Protection, a coalition of groups including the Humane Society of the United States (HSUS), American Society for the Prevention of Cruelty to Animals (ASPCA),

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<sup>56</sup> Casey, *supra* note 4.

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

<sup>58</sup> *Dead in Minutes: Dogs and Heatstroke*, MERCOLA, <http://healthypets.mercola.com/sites/healthypets/archive/2010/08/10/dead-in-minutes-dogs-and-heatstroke.aspx> [https://perma.cc/X7JX-VX3Z] (Aug. 10, 2010) (accessed Feb. 7, 2016); Kim Hughes, *Veterinarian Locks Self in Hot Car for Pet Experiment*, SAMARITAN MAG., <http://www.samaritanmag.com/1589/veterinarian-locks-self-hot-car-pet-experiment> [https://perma.cc/ER73-KSU4] (July 11, 2013) (accessed Feb. 7, 2016).

<sup>59</sup> Gajanan, *supra* note 47.

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

<sup>61</sup> VETERINARY SERVICES, USDA, LAYERS 2013 PART I: REFERENCE OF HEALTH AND MANAGEMENT PRACTICES ON TABLE-EGG FARMS IN THE UNITED STATES 9 (2014), [https://www.aphis.usda.gov/animal\\_health/nahms/poultry/downloads/layers2013/Layers2013\\_dr\\_PartI.pdf](https://www.aphis.usda.gov/animal_health/nahms/poultry/downloads/layers2013/Layers2013_dr_PartI.pdf) [https://perma.cc/QU34-AAZT] (accessed Feb. 18, 2016).

<sup>62</sup> VETERINARY SERVICES, USDA, SWINE 2012 PART I: BASELINE REFERENCES OF SWINE HEALTH AND MANAGEMENT IN THE UNITED STATES 28 (2015), [https://www.aphis.usda.gov/animal\\_health/nahms/swine/downloads/swine2012/Swine2012\\_dr\\_PartI.pdf](https://www.aphis.usda.gov/animal_health/nahms/swine/downloads/swine2012/Swine2012_dr_PartI.pdf) [https://perma.cc/LF4N-XBSQ] (accessed Feb. 18, 2016).

<sup>63</sup> Miller, *supra* note 5; An Act to Prevent Cruelty to Farm Animals, *supra* note 5.



and United Farm Workers, is backing the measure.<sup>64</sup> Wayne Pacelle, the president of HSUS, has come to see ballot initiatives as “democratic safety valve[s] to allow for policies to be adopted that were popular with the public but that had been unfairly thwarted by a small number of state legislators.”<sup>65</sup> The ballot initiative process has met with success in a number of states: a 2002 measure in Florida prohibited gestation crates, a 2006 measure in Arizona banned gestation and veal crates, and in 2008 California voters approved Proposition 2, which outlawed gestation crates, veal crates, and battery cages.<sup>66</sup>

In order to get the measure on the ballot so that Massachusetts residents can vote on it, the coalition had to gather over 64,750 signatures.<sup>67</sup> The coalition far exceeded this, collecting 95,817 signatures.<sup>68</sup> The measure will now go to the state legislature where, if it does nothing, the coalition will have to gather another 10,792 signatures by early July to get the measure on the ballot.<sup>69</sup> Based on the coalition’s success, it seems likely that Massachusetts’ residents will be voting on this measure in November.

## V. EXOTIC ANIMALS

### A. *Maine*

The Maine legislature passed L.D. 1369, An Act to Restructure the Permitting Process for Wildlife and Exotic Species in Captivity, in July over the governor’s veto.<sup>70</sup> It restructures the permitting process for wildlife and exotic species by providing for an application fee and amending the permit fees.<sup>71</sup> It requires the Department of Inland Fisheries and Wildlife (DIF&W) to, among other tasks, issue permits for the importation of fish or gametes, maintain updated inspection provisions for applicants attempting to acquire a permit, require edu-

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<sup>64</sup> Miller, *supra* note 5; *About Citizens for Farm Animal Protection*, CITIZENS FOR FARM ANIMAL PROTECTION, <http://www.citizensforfarmanimals.com/about> [https://perma.cc/CNC2-SHT4] (accessed Feb. 18, 2016).

<sup>65</sup> Miller, *supra* note 5.

<sup>66</sup> Joshua Miller, *Mass. Ballot Push Would Mandate Cage-Free Eggs*, THE BOSTON GLOBE, <https://www.bostonglobe.com/metro/2015/08/19/ballot-push-would-mandate-cage-free-eggs/IW2C2aPBiYH6xZi1jqePtL/story.html> [https://perma.cc/2F47-JYJM] (Aug. 19, 2015) (accessed Feb. 18, 2016).

<sup>67</sup> *Initiative Petition Process, 2015–2016*, MASS.GOV, <http://www.mass.gov/ago/government-resources/initiatives-and-other-ballot-questions/initiative-petition-process.html> [https://perma.cc/L74N-CE4Y] (2016) (accessed Feb. 19, 2016).

<sup>68</sup> Colin A. Young, *Major Signature Hurdle Cleared by Seven Ballot Question Campaigns*, CITIZENS FOR FARM ANIMAL PROTECTION, <http://www.citizensforfarmanimals.com/media/major-signature-hurdle-cleared-seven-ballot-question-campaigns> [https://perma.cc/T24V-E3GS] (2015) (accessed Feb. 19, 2016).

<sup>69</sup> *Initiative Petition Process, 2015–2016*, *supra* note 67.

<sup>70</sup> An Act To Restructure the Permitting Process for Wildlife and Exotic Species in Captivity, L.D. 1369, 2015 Sess. (Me. 2015).

<sup>71</sup> *Id.* §§ 7–8.

cation on minimum standard facility requirements for applicants, and increase inspection for regulated species.<sup>72</sup>

The bill was sponsored by Sen. Paul Davis at the request of the DIF&W.<sup>73</sup> This long-overdue revision was needed because DIF&W shoulders much of the regulatory burden for the management of exotic animals, yet receives no public funding to oversee the state's permitting program.<sup>74</sup> After a spate of incidents, including a boa constrictor on the loose in southern Maine, a tenement-house fire in Auburn where firefighters arrived to find several more boa constrictors slithering all over the apartment, and hospitalization for a Portland man who was bitten by a rat purchased at Petco,<sup>75</sup> the legislature convened a task force "to consider the effect of the importation and possession of wildlife and the issues of possession and exhibition of wildlife in the State."<sup>76</sup>

Jim Connolly, DIF&W's top official heading both the fisheries and wildlife divisions, reported at the task force meetings that several members of his staff spend "a lot of time" on exotic animal issues.<sup>77</sup> This misallocation of resources is exacerbated by the ease with which one can obtain permits for animals not on the unrestricted list. These permits are only \$25, and requirements such as annual inspections of cages by game wardens are often ignored.<sup>78</sup> Connolly recognized the problem, and asked at one of the task force meetings whether "the department [should] be considering any request from anywhere in the world just because somebody wants to have something?"<sup>79</sup> Maine's troubling incidents with exotic animals, as well as the state's changing climate that enables many exotic species to survive and thrive, indicate that the answer to that question is a resounding no.<sup>80</sup> Concerning the legislation, which will increase permit fees, expand DIF&W's authority to conduct inspections, and direct the agency to revisit the list of species allowed without a permit, Rep. Dale Crafts (a member of the Legislature's Inland Fisheries and Wildlife Committee) said that it is "a huge step and will hopefully reduce the number of these animals in Maine."<sup>81</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> George Smith, *Debating Dangerous Rats, Snakes, and Other Exotic Animals*, GEORGE'S OUTDOOR NEWS, <http://georgesoutdoornews.bangordailynews.com/2015/05/03/environmental-issues/debating-dangerous-rats-snakes-and-other-exotic-animals/> [https://perma.cc/65XP-KRV8] (May 3, 2015) (accessed Feb. 19, 2016).

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

<sup>75</sup> George Smith, *Legislature Tightens Rules Governing Exotic Animals—And None Too Soon*, CENT. ME., <https://www.centralmaine.com/2015/07/22/legislature-tightens-rules-governing-exotic-animals-and-none-too-soon/> (July 22, 2015) (accessed Feb. 19, 2016).

<sup>76</sup> Smith, *supra* note 73.

<sup>77</sup> Smith, *supra* note 75.

<sup>78</sup> *Id.*

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

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

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

*B. Wisconsin*

Wisconsin's SB 241, introduced in August, would ban ownership, breeding, and sale of "dangerous" exotic animals including nonnative big cats, bears, apes, and crocodylians.<sup>82</sup> Wisconsin is one of only five states, including Alabama, Nevada, North Carolina, and South Carolina that currently do not have a ban on keeping dangerous exotic animals.<sup>83</sup> Current owners of banned pets would be allowed to keep their animals, but would face a \$1,000 fine for breeding or selling the animals and a \$2,000 fine if a dangerous exotic pet attacks someone or causes property damage.<sup>84</sup>

Sen. Van Wanggaard of Racine proposed SB 241 following reports of a "lion-like" creature roaming the streets of Milwaukee.<sup>85</sup> Wisconsin's current exotic pet laws are considered among the most lax in the country by some advocates, who claim that it encourages ownership of animals unsuited to domestic life.<sup>86</sup> A study by the Wisconsin Center for Investigative Journalism also points to a lack of oversight in the state, even by the USDA.<sup>87</sup> In 2005, firefighters discovered several exotic animals—in this instance, tigers—when responding to a house fire in Dunn County, and no one knew they were there prior to the fire.<sup>88</sup> More recently, animal control officers have dealt with a runaway ostrich, an escaped wallaby, a deadly spitting cobra that had bitten its owner, and 300 chinchillas seized from one home.<sup>89</sup> The bill was also partially inspired by a 2013 incident in which police and the Racine Zoo discovered rattlesnakes, alligators, a snapping turtle, and a Gila monster in a Kenosha home.<sup>90</sup> A recent amendment to the bill offered by Sen. Wanggaard would remove a provision forbidding members of the public from coming into direct contact with dangerous exotics.<sup>91</sup> It would also exempt members of the Zoological Association of America as well as people and facilities licensed by the USDA, significantly

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<sup>82</sup> S.B. 241, 2015–16 Reg. Sess. (Wis. 2015).

<sup>83</sup> Haley Henschel, *Limits to Exotic Pets in Wisconsin Loom, but Critics Cite Several Loopholes*, WIS. CTR FOR INVESTIGATIVE JOURNALISM, <http://wisconsinwatch.org/2015/10/limits-to-exotic-pets-in-wisconsin-loom-but-critics-cite-several-loopholes/> [https://perma.cc/7T2K-HCTB] (Oct. 15, 2015) (accessed Feb. 19, 2016).

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

<sup>85</sup> *Id.*

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

<sup>87</sup> Haley Henschel, *Wisconsin One of Five States Where 'Dangerous' Exotic Animals Can Be Pets*, WIS. CTR FOR INVESTIGATIVE JOURNALISM, <http://wisconsinwatch.org/2015/08/exotic-and-exploited-lions-and-tigers-and-wisconsins-lax-wild-animal-laws/> [https://perma.cc/5JP9-UAER] (Aug. 16, 2015) (accessed Feb. 19, 2016).

<sup>88</sup> *Id.*; cf. Smith, *supra* note 75 (describing a similar situation where firefighters in Maine responded to a structure fire only to find boa constrictors loose in the apartment).

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

<sup>90</sup> Henschel, *supra* note 83.

<sup>91</sup> Senate Amendment 1 to Senate Bill 241, 2015–16 Reg. Sess. (Wis. 2015), [http://docs.legis.wisconsin.gov/2015/related/amendments/sb241/sa1\\_sb241](http://docs.legis.wisconsin.gov/2015/related/amendments/sb241/sa1_sb241) [https://perma.cc/CQW9-CYN3] (accessed Feb. 19, 2016).

weakening the bill.<sup>92</sup> Although the bill may not accomplish what lawmakers initially hoped it would, according to Chuck Wikenhauser, director of the Milwaukee County Zoo, it would at the very least be a symbolic effort to rein in Wisconsin's exotic animal situation and bring the state more in line with the rest of the nation.<sup>93</sup>

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<sup>92</sup> Henschel, *supra* note 83.

<sup>93</sup> *Id.*