

## 2017 STATE LEGISLATIVE REVIEW

By  
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### I. INTRODUCTION

While the new federal administration has had a less-than-stellar record with animal protection,<sup>1</sup> individual states have stepped up to

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<sup>1</sup> See Rachael Revesz, *Donald Trump Administration Ends Measure to Protect Endangered Sea Animals Getting Caught in Fishing Nets*, INDEPENDENT (June 13, 2017), <http://www.independent.co.uk/news/world/americas/donald-trump-administration-ends-measure-endangered-sea-animals-caught-fishing-nets-environmental-a7787541.html> [https://perma.cc/R4NM-WDQR] (accessed Aug. 3, 2018) (discussing President Trump’s administration’s decision to throw out a proposal that would have protected endangered whales); see also Natasha Daly, *U.S. Animal Abuse Records Deleted—What we Stand to Lose*, NAT’L GEOGRAPHIC (Feb. 6, 2017), <https://news.nationalgeographic.com/2017/02/wildlife-watch-usda-animal-welfare-trump-records/> [https://perma.cc/26SK-H5MH] (accessed Aug. 3, 2018) (discussing President Trump’s administration’s decision to remove thousands of documents detailing animal welfare violations from the United States Department of Agriculture’s ((USDA) website); See also Wayne Pacelle, *Trump’s Agriculture Team Threatens to Kill First-Ever Federal Animal Welfare Standards for Farm Animals*, HUMANE SOC’Y U.S.: A HUMANE NATION (May 11, 2017), <https://blog.humanesociety.org/2017/05/trump-usda-threatens-to-kill-organic-farm-animal-welfare-standards.html> [https://perma.cc/QES2-KWS2] (accessed Aug. 3, 2018) (discussing President Trump’s agricultural teams’ threat to kill the first-ever animal welfare standards for farm animals).

the plate and utilized their powers to enact several important animal related bills in 2017. First-of-its-kind legislation was passed in California, New York, and Illinois. Some states followed in the legislative footsteps of other states who had previously passed “good samaritan” hot car laws, divorce custody laws, and research animal adoption laws. Texas passed a law banning the use of drones over concentrated animal feeding operations, which marks the only ag-gag type legislation to pass in 2017. Overall, animal advocates in state legislatures were successful this year.

## II. RETAIL PET BAN

California, which once again ranks number one in the country for animal welfare,<sup>2</sup> introduced and passed the landmark statewide retail pet ban.<sup>3</sup> Assembly Bill 485, states that a “pet store operator shall not sell a live dog, cat or rabbit in a pet store unless the dog, cat or rabbit was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group . . . .”<sup>4</sup> This is the first statewide regulation of its kind. Los Angeles, West Hollywood, Irvine, and thirty other cities in California have placed restrictions on the retail sale of animals, and cities in sixteen other states have also passed similar ordinances.<sup>5</sup> The bill’s sponsors and primary authors cite the purpose of the legislation as an attempt to curb, in part, the flow of cats, dogs, and rabbits from minimally regulated commercial breeders into California pet stores.<sup>6</sup> They state that “California taxpayers spend a quarter of a billion dollars annually to house and kill animals in local shelters while puppy mills throughout the country continue to mass breed animals for profit.”<sup>7</sup> Indeed, in the last five years, Los Angeles County Animal Services alone euthanized 48,559 dogs and cats, which amounts to more than one-fifth of the animals taken in by animal services.<sup>8</sup> In 2015, Monte-

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<sup>2</sup> *Humane State Ranking 2017: Total Scores*, HUMANE SOC’Y U. S., <https://blog.humanesociety.org/wp-content/uploads/2018/01/Total-Scores-2017-3.pdf> [<https://perma.cc/A5SQ-F8VG>] (accessed Aug. 3, 2018).

<sup>3</sup> A.B. 485, 2017–18 Reg. Sess. (Cal. 2017).

<sup>4</sup> CAL. HEALTH & SAFETY CODE § 122354.5 (West 2017).

<sup>5</sup> ELISSA SILVA, CAL. ASSEMB., ASSEMBLY THIRD READING: A.B. 485 (Cal. 2017), [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB485](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB485) [<https://perma.cc/8UKN-YPUG>] (accessed Aug. 3, 2018) (follow link to “5/19/17- Assembly Floor Analysis”).

<sup>6</sup> Christine Hauser, *California ‘Puppy Mill’ Ban Would Also Cover Kittens and Bunnies*, N.Y. TIMES (Sep. 18, 2017), <https://www.nytimes.com/2017/09/18/us/california-puppy-mill-ban.html> [<https://perma.cc/D5MT-J4HS>] (accessed Aug. 3, 2018).

<sup>7</sup> SILVA, *supra* note 5.

<sup>8</sup> *LA Animal Services Outcome Totals for Cats and Dogs by Fiscal Year from 7/1/12 to 2/28/18*, L.A. ANIMAL SERVS., <http://www.laanimalservices.com/pdf/reports/CatNDogIntakeNOutcomes.pdf> [<https://perma.cc/GSM4-E2F2>] (accessed Aug. 3, 2018).

rey County's Society for the Prevention of Cruelty to Animals (SPCA) euthanized forty-nine percent of the shelter's dog and cat intake.<sup>9</sup>

Opponents of the bill argued that Assembly Bill 485 was an "extreme overreach" that would result in the end of small, local pet stores that do not obtain their animals from mills.<sup>10</sup> Additionally, this law would lead to a push to buy animals from under-regulated markets like the internet.<sup>11</sup> The American Kennel Club wrote in opposition because the bill will make it more difficult for families to have the freedom of choosing what kind of dog they want, which, they argue, will lead to more animals ending up in shelters.<sup>12</sup> Opponents proposed instead that the bill should limit sales to animals that are obtained from breeders that are licensed by the United States Department of Agriculture (USDA) and have "acceptable compliance" with USDA regulations.<sup>13</sup> Mike Bober of the Pet Industry Advisory Council argued that existing laws (specifically California's warranty laws), combined with common business principles provide more protection to both pets and buyers than a retail ban would.<sup>14</sup> This is due in part to the fact that, according to Bober, the state's warranty laws "make pet stores the *most* regulated pet-providing entities in California."<sup>15</sup> The bill, however, does not affect small licensed breeders that sell directly to customers;<sup>16</sup> therefore, it is not an end to all bred dogs or cats in the state. Despite opposition and alternatives, the bill passed unanimously in

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<sup>9</sup> Ana Ceballos, *A Close Look at the SPCA for Monterey County's Euthanasia Rates*, MONTEREY COUNTY WKLY. (June 9, 2016), [http://www.montereycountyweekly.com/news/cover/a-close-look-at-the-sPCA-for-monterey-county-s/article\\_b4d932c8-2dcf-11e6-8277-cbdc8851b9d5.html](http://www.montereycountyweekly.com/news/cover/a-close-look-at-the-sPCA-for-monterey-county-s/article_b4d932c8-2dcf-11e6-8277-cbdc8851b9d5.html) [https://perma.cc/6ASH-PXDP] (accessed Aug. 3, 2018). Note that this statistic includes animals euthanized for untreatable medical conditions and the total number of animals euthanized in 2015 was 2,725.

<sup>10</sup> BILL GAGE, S. RULES COMM., THIRD READING, A.B. 485 (Cal. 2017), [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB485](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB485) [https://perma.cc/ERA5-R25F] (accessed Aug. 3, 2018) (follow link to "7/19/17- Senate Floor Analyses").

<sup>11</sup> *Id.*

<sup>12</sup> Madeline Farber, *California Passes Law Requiring Pet Stores to Sell Rescue Animals Only*, FOX NEWS (Oct. 17, 2017), <http://www.foxnews.com/lifestyle/2017/10/17/california-passes-law-requiring-pet-stores-to-sell-rescue-animals-only.html> [https://perma.cc/WG3E-UFGT] (accessed Aug. 3, 2018).

<sup>13</sup> BILL GAGE, S. COMM. ON BUS., PROFESSIONS AND ECONOMIC DEV., A.B. 485, Reg. Sess. (Cal. 2017), [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB485](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB485) [https://perma.cc/C352-DP9X] (accessed Aug. 3, 2018) (follow link to "7/14/17- Senate Business, Professions and Economic Development").

<sup>14</sup> Mike Bober, *California Ban on Pet Sales Would Strip Longstanding Consumer Protections*, WASH. EXAMINER (Oct. 9, 2017, 12:01 AM), <http://www.washingtonexaminer.com/california-ban-on-pet-sales-would-strip-longstanding-consumer-protections/article/2636740> [https://perma.cc/U8D4-8NLN] (accessed Aug. 3, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> Joan Morris, *Will California Require Pet Stores to Sell Only Rescue Animals? Bill Headed to Senate Vote*, MERCURY NEWS (updated July 18, 2017, 2:06 PM), <https://www.mercurynews.com/2017/07/18/will-california-require-pet-stores-to-sell-only-rescue-animals-bill-headed-to-senate-vote/> [https://perma.cc/WR9L-VGKA] (accessed Aug. 3, 2018).

the Senate, with an overwhelming majority in the Assembly, and was signed by Governor Jerry Brown on October 13.<sup>17</sup> The law goes into effect on January 1, 2019 to allow pet store owners time to establish relationships with local humane organizations to obtain animals.<sup>18</sup>

### III. “GOOD SAMARITAN” HOT CAR LAWS

In 2017, both Colorado<sup>19</sup> and Oregon<sup>20</sup> joined nine other states (Arizona, California, Florida, Indiana, Massachusetts, Ohio, Tennessee, Vermont, and Wisconsin) in passing Good Samaritan laws.<sup>21</sup> Generally, these laws grant civil or criminal immunity for a private citizen who forcibly enters a vehicle to save an animal.<sup>22</sup> Colorado’s House Bill 17-1179 was signed by Governor John Hickenlooper on April 4, 2017<sup>23</sup> and Oregon’s House Bill 2732 was signed by Governor Kate Brown on June 22.<sup>24</sup> Both laws provide that a person is not subject to criminal or civil liability if they meet certain requirements before and after the rescue.<sup>25</sup> Colorado’s bill provides that for a rescuer to forcibly enter a vehicle with an animal inside, the rescuer must have a reasonable belief that the animal is in imminent danger of death or serious bodily injury, determine that the forcible entry is necessary, make a reasonable effort to locate the owner, contact law enforcement before forcibly entering the vehicle, and must remain with the vehicle until law enforcement arrives.<sup>26</sup> Oregon’s bill differs from Colorado’s law in that it does not require the rescuer to attempt to locate the owner, and it also states that the rescuer must use no more force than is necessary to remove the animal from the vehicle.<sup>27</sup> The Oregon legislation came not a moment too soon, as Oregon residents experienced a heat wave that broke record highs in early August.<sup>28</sup> Both Oregon and Colorado’s law,

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<sup>17</sup> *AB-485 Pet Store Operators: Dogs, Cats, and Rabbits, History*, CAL. LEGIS. INFO., [https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201720180AB485](https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180AB485) [<https://perma.cc/WMQ8-97K4>] (accessed Aug. 3, 2018).

<sup>18</sup> Cal. A.B. 485.

<sup>19</sup> See *Humane State Ranking 2017*, *supra* note 2 (ranking Colorado fifth in animal welfare).

<sup>20</sup> See *id.* (ranking Oregon second in animal welfare).

<sup>21</sup> *Overview of State Laws: Leaving Unattended Animals in Vehicles*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/cases-campaigns/action-alerts/dogs-in-hot-cars/overview-of-state-laws-leaving-unattended-animals-in-vehicles/> [<https://perma.cc/PU5S-LF8E>] (accessed Aug. 3, 2018).

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

<sup>23</sup> H.B. 17-1179, 71st Gen. Assemb., Reg. Sess. (Colo. 2017).

<sup>24</sup> H.B. 2732, 79th Leg. Assemb., Reg. Sess. (Or. 2017).

<sup>25</sup> COLO. REV. STAT. ANN. § 13-21-108.4 (West 2017); 2017 Or. Laws. Ch. 424, at 1.

<sup>26</sup> COLO. REV. STAT. ANN. § 13-21-108.4.

<sup>27</sup> Or. Laws Ch. 424, at 1.

<sup>28</sup> Jonathan Belles, *Western Heat Wave Breaks Record Highs in Oregon and Washington*, WEATHER CHANNEL (Aug. 4, 2017, 9:00 AM), <https://weather.com/forecast/regional/news/record-heat-west-early-august-2017> [<https://perma.cc/V5A7-GKNW>] (accessed Aug. 3, 2018).

like all other Good Samaritan laws, contain an exemption for livestock.<sup>29</sup>

#### IV. DIVORCE CUSTODY LAWS

Illinois, ranked number five on the Humane Society of the United States) (HSUS) welfare list,<sup>30</sup> joins Alaska, number thirty-six,<sup>31</sup> in amending its divorce laws to allow courts to consider the best interests of an animal in divorce custody disputes.<sup>32</sup> Illinois' Senate Bill 1261 provides that the parties in a divorce action may petition for the temporary or permanent allocation of sole or joint ownership of any domestic animal, and that in issuing the order for allocation of ownership or responsibility the court "shall take into consideration the well-being of the companion animal."<sup>33</sup> Senator Linda Holmes (D-Aurora), who sponsored the law, said "it sort of starts treating your animal more like children,"<sup>34</sup> which is a change from the previous method of treating animals like property in the division of a couple's estate.<sup>35</sup> The court can possibly now take into consideration which person does more work in caring for the pet, like feeding, walking, and veterinary care.<sup>36</sup>

Alaska was the first state to amend its divorce statute to allow judges to consider an animal's well-being in determining who gets custody. It also included a provision that allowed Alaska to become the thirty-second state to permit animals to be included in domestic violence protection orders.<sup>37</sup> The link between animal abuse and domestic violence has been well documented.<sup>38</sup> In a support letter, the

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<sup>29</sup> COLO. REV. STAT. ANN. § 13-21-108.4; Or. Laws. Ch. 424, at 1.

<sup>30</sup> *Humane State Ranking 2017*, *supra* note 2.

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

<sup>32</sup> Leonor Vivanco-Pregaman, *New State Law Treats Pets More like Children in Custody Cases*, CHI. TRIB. (Dec. 25, 2017, 5:00 AM) <http://www.chicagotribune.com/news/local/breaking/ct-met-pet-custody-law-20171218-story.html> [<https://perma.cc/9DJH-5FFA>] (accessed Aug. 3, 2018).

<sup>33</sup> 750 ILL. COMP. STAT. ANN. 5/503 (LexisNexis 2017).

<sup>34</sup> Vivanco-Pregaman, *supra* note 32.

<sup>35</sup> WQAD Digital Team, *New Illinois Divorce Law Would Give Pet Custody to Better Owner*, WQAD 8 (Dec. 15, 2017, 3:00 PM) <http://wqad.com/2017/12/15/new-illinois-divorce-law-would-give-pet-custody-to-better-owner/> [<https://perma.cc/7KKD-MGR6>] (accessed Aug. 3, 2018).

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

<sup>37</sup> Karin Brulliard, *In a First, Alaska Divorce Courts Will Now Treat Pets More Like Children*, WASH. POST: ANIMALIA (Jan. 24, 2017), [https://www.washingtonpost.com/news/animalia/wp/2017/01/24/in-a-first-alaska-divorce-courts-will-now-treat-pets-more-like-children/?utm\\_term=.3703455dea5b](https://www.washingtonpost.com/news/animalia/wp/2017/01/24/in-a-first-alaska-divorce-courts-will-now-treat-pets-more-like-children/?utm_term=.3703455dea5b) [<https://perma.cc/BVZ2-ZBHG>] (accessed Aug. 3, 2018); Rebecca F. Wisch, *Domestic Violence and Pets: List of States that Include Pets in Protection Orders*, MICH. ST. U.: ANIMAL LEGAL & HIST. CTR. (2017), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders> [<https://perma.cc/M7CC-295P>] (accessed Aug. 3, 2018).

<sup>38</sup> See generally ALLIE PHILLIPS, UNDERSTANDING THE LINK BETWEEN VIOLENCE TO ANIMALS AND PEOPLE 9–10 (Nat'l Dist. Attorneys Ass'n ed., June 2014) (reporting statistics regarding the link between domestic violence and animal abuse and giving guidance to criminal justice professionals).

National Link Coalition provided Alaska's representatives with evidence of research finding that nearly seventy-one percent of domestic violence victims with pets reported that the abusers had threatened, injured, or killed their pets.<sup>39</sup> House Bill 147 passed unanimously in the Alaska Senate and House.<sup>40</sup> Governor Bill Walker signed it in October of 2016 and the law took effect in January of 2017.<sup>41</sup>

## V. ANIMAL CRUELTY REFORM

Pennsylvania<sup>42</sup> did a major overhaul of its animal cruelty statutes in 2017. HB 1238, also known as Libre's Law, was the first significant strengthening of Pennsylvania's animal cruelty laws in thirty years.<sup>43</sup> The law was inspired by a boxer puppy named Libre who was found suffering from mange and emaciation on a Lancaster County farm.<sup>44</sup> After an unsatisfactory investigation by Lancaster County SPCA into Libre's case, the county District Attorney asked legislators to change the existing cruelty statutes.<sup>45</sup> This change was sorely needed, because Libre's incident was not an isolated one. Pennsylvania is home to twelve of the "horrible hundred" puppy mills according to HSUS,<sup>46</sup> and seven of those twelve are located in Lancaster county, which has been

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<sup>39</sup> Letter from Phil Arkow, Coordinator, Nat'l Link Coal., to the Alaska State Legislature (Mar. 28, 2016), [http://www.akleg.gov/basis/get\\_documents.asp?session=29&docid=64797](http://www.akleg.gov/basis/get_documents.asp?session=29&docid=64797) [<https://perma.cc/V2QW-PK4J>] (accessed Aug. 3, 2018).

<sup>40</sup> *Legislature Passes Bill Providing New Protections for Pets in Alaska*, KTVA CBS 11 NEWS (Apr. 17, 2016, 10:19 PM), <http://www.ktva.com/story/36042723/legislature-passes-bill-providing-new-protections-for-pets-in-alaska> [<https://perma.cc/8NA2-RE8W>] (accessed Aug. 3, 2018).

<sup>41</sup> Nicole Pallotta, *Alaska Legislature Becomes First to Require Consideration of Animals' Interests in Custody Cases*, ANIMAL LEGAL DEF. FUND (Jan. 20, 2017), <http://aldf.org/blog/alaska-legislature-becomes-first-to-require-consideration-of-animals-interests-in-custody-cases/> [<https://perma.cc/UE59-G2UV>] (accessed Aug. 3, 2018).

<sup>42</sup> See *Humane State Ranking 2017*, *supra* note 2 (ranking Pennsylvania fifteenth in animal welfare).

<sup>43</sup> See *Comprehensive Animal Cruelty Act 10 (formerly HB 1238) AKA Libre's Law*, HUMANE PA, <https://humane-pa.org/current-legislation-2/fact-sheets-about-pending-bills-2017/comprehensive-animal-cruelty-bill/> [<https://perma.cc/E7VP-ZLXQ>] (accessed Aug. 3, 2018) (stating that Pennsylvania's animal cruelty code was originally drafted in 1983 and needed updating).

<sup>44</sup> Abbey Zelko, *From the 'Brink of Death,' Libre the Dog Now Inspires Others*, YORK DAILY REC. (June 28, 2017, 4:51 PM), <http://www.ydr.com/story/life/2017/06/28/brink-death-libre-now-inspires-others/430841001/> [<https://perma.cc/Q5KV-MRTC>] (accessed Aug. 3, 2018).

<sup>45</sup> Valerie Waltz, *DA Announces Charges Against Libre's Former Owner, Calls for Suspension of Lancaster Co. SPCA Exec. Dir.*, WPMT FOX 43 (updated Aug. 11, 2016, 11:15 AM), <http://fox43.com/2016/08/11/da-announces-charges-against-libres-former-owner-calls-for-suspension-of-lancaster-county-sPCA-exec-dir/> [<https://perma.cc/NSC9-J8HN>] (accessed Aug. 3, 2018).

<sup>46</sup> *The Horrible Hundred 2017: Uncovering U.S. Puppy Mills*, HUMANE SOC'Y U.S. (May 9, 2017), [http://www.humanesociety.org/news/press\\_releases/2017/05/horrible-hundred-2017-uncovering-puppy-mills.html?referrer=https://www.google.com/](http://www.humanesociety.org/news/press_releases/2017/05/horrible-hundred-2017-uncovering-puppy-mills.html?referrer=https://www.google.com/) [<https://perma.cc/5P8J-D8GA>] (accessed Aug. 3, 2018).

called the puppy mill capital of the East.<sup>47</sup> Puppy mills are commercial dog breeding operations where profit is prioritized over the well-being of the dogs.<sup>48</sup> At best, this can lead to cramped cages where dogs are continuously bred until they are no longer able to and are euthanized or auctioned off.<sup>49</sup> At worst, these commercial breeding operations are unsanitary, where dogs spend their entire lives in a single tiny cage and receive no veterinary care.<sup>50</sup> A USDA license is required for any facility that sells more than twenty-five dogs or cats per year.<sup>51</sup> While the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for regulating these facilities and inspecting them for compliance with the Animal Welfare Act (AWA), there are significant problems with the system.<sup>52</sup> Firstly, there are only 120 inspectors nationwide and an estimated 7,300 licensed and registered facilities,<sup>53</sup> which leads to less than aggressive enforcement. Secondly, and more importantly, because facilities that sell directly to the public rather than wholesale to pet stores are not regulated under the AWA, there are thousands of unlicensed and therefore unaccountable commercial breeders in the United States.<sup>54</sup> Libre's suffering at the hands of a breeder, and the international outcry that followed, was the push needed for Pennsylvania to enact stronger animal cruelty provisions.<sup>55</sup>

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<sup>47</sup> Tom Knapp, *7 Lancaster County Kennels Listen Among Humane Society's 'Horrible 100' Breeding Facilities*, LANCASTER ONLINE (May 9, 2017), [http://lancasteronline.com/news/local/lancaster-county-kennels-listed-among-humane-society-s-horrible-breeding/article\\_a4421dce-34f6-11e7-9c4d-130b29e334ac.html](http://lancasteronline.com/news/local/lancaster-county-kennels-listed-among-humane-society-s-horrible-breeding/article_a4421dce-34f6-11e7-9c4d-130b29e334ac.html) [https://perma.cc/V547-M6GF] (accessed Aug. 3, 2018); Tom Knapp, *Looking for a Dog? Here are Tips for Avoiding a Lancaster County Puppy Mill*, LANCASTER ONLINE (Aug. 25, 2016), [http://lancasteronline.com/news/local/looking-for-a-dog-here-are-tips-for-avoiding-a/article\\_b49e07b8-693c-11e6-b8ae-4f900d9060a0.html](http://lancasteronline.com/news/local/looking-for-a-dog-here-are-tips-for-avoiding-a/article_b49e07b8-693c-11e6-b8ae-4f900d9060a0.html) [https://perma.cc/ECH9-TWGH] (accessed Aug. 3, 2018).

<sup>48</sup> *Puppy Mills*, ASPCA, <https://www.aspc.org/animal-cruelty/puppy-mills> [https://perma.cc/K75F-STYV] (accessed Aug. 10, 2018).

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

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

<sup>51</sup> U.S. DEP'T AGRICULTURE, *Regulated Businesses (Licensing and Registration)*, [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct\\_awa\\_regulated\\_businesses](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct_awa_regulated_businesses) [https://perma.cc/U8ZJ-N36P] (accessed Aug. 3, 2018).

<sup>52</sup> See Lyle Muller & Jacob Luplow, *Only 120 Inspectors Check U.S. Dog Breeding Operations*, DES MOINES REG. (Jan. 3, 2015, 2:27 PM), <https://www.desmoinesregister.com/story/news/investigations/2015/01/03/inspectors-dog-breeders/21201649/> [https://perma.cc/24KJ-BYJR] (accessed Aug. 3, 2018) (discussing how "a highly critical 2010 review . . . said the U.S. Department of Agriculture's Animal and Plant Health Inspection Service was not doing enough").

<sup>53</sup> *Id.*

<sup>54</sup> Michelle Riley, *Puppy Mills: Frequently Asked Questions*, HUMANE SOC'Y U.S., [http://www.humanesociety.org/issues/puppy\\_mills/qa/puppy\\_mill\\_FAQs.html](http://www.humanesociety.org/issues/puppy_mills/qa/puppy_mill_FAQs.html) [https://perma.cc/CKY6-TSCU] (accessed Aug. 3, 2018).

<sup>55</sup> See *Libre's Lesson: A Rescued Dog Galvanizes Pa.'s Animal Cruelty Law*, PITTSBURGH POST-GAZETTE (July 2, 2017, 9:00 PM), <http://www.post-gazette.com/opinion/editorials/2017/07/03/Libre-s-lesson-A-rescued-dog-galvanizes-Pa-s-animal-cruelty-law/stories/201707030066a> [https://perma.cc/BT3R-L657] (accessed Aug. 3, 2018) (stating that Libre's ailments and recovery made international news, and Libre's paw print was inked onto the new law).

Pennsylvania had previously been one of only three states that did not have a felony charge for first-time cruelty offenses.<sup>56</sup> The law restructures the penalties for cruelty based on the egregiousness of the conduct and prior offenses into three categories, ranging from neglect (a misdemeanor) to aggravated cruelty (a felony).<sup>57</sup> The law also has an anti-tethering provision.<sup>58</sup> A dog may not be tethered for more than nine hours during a twenty-four hour period, and no longer than thirty minutes when the temperature is over ninety degrees or under thirty-two degrees.<sup>59</sup> Additionally, penalties for crimes against horses were enhanced to match those for crimes against dogs and cats.<sup>60</sup> Prior to the enactment of Libre's Law, most crimes against horses were treated as summary offenses, which are not punished heavily.<sup>61</sup> Finally, Libre's law provides civil immunity from lawsuits to veterinarians and veterinary technicians who report animal cruelty in good faith.<sup>62</sup> Some are finding the enforcement of the new laws difficult or confusing.<sup>63</sup> The president of a Pennsylvania dog rescue has attributed some of the confusion to the fact that there was no plan to educate police and humane officers about the law and its effects.<sup>64</sup>

## VI. LABORATORY ANIMAL ADOPTION

Illinois passed SB 1884, a laboratory animal adoption provision similar to those previously passed in Minnesota, California, Connecticut, Nevada, and New York.<sup>65</sup> The law provides that "[a] research facility, after the completion of any research involving a dog or cat, shall

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; see also HUMANE PA, *supra* note 43 (reporting that for neglect, the summary offense is "up to 90 days in jail and/or a \$300 fine. If neglect causes bodily injury or places the animal at imminent risk of serious bodily injury, it is a Misdemeanor of the second or third degree which means up to 1 year in jail and/or \$2,000 fine." Aggravated cruelty (section 5534) is a "Felony of the third degree—up to 7 years in jail and/or a \$15,000 fine.").

<sup>58</sup> HUMANE PA, *supra* note 43.

<sup>59</sup> *Id.*

<sup>60</sup> Press Release, Governor Tom Wolf (D-Pa.), Governor Wolf Reminds Pet Owners of Temperature Restrictions, Penalties in Place with New Animal Cruelty Laws (Nov. 16, 2017), <https://www.governor.pa.gov/governor-wolf-reminds-pet-owners-temperature-restrictions-penalties-place-new-animal-cruelty-laws/> [<https://perma.cc/R8G8-K6BC>] (accessed Aug. 5, 2018).

<sup>61</sup> *Id.* Other summary offenses are littering and traffic violations, carrying only a monetary penalty.

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

<sup>63</sup> Hannah Smith, *Officials Experience Learning Curve with Libre's Law*, WEARECENTRALPA.COM (updated Jan. 5, 2018, 2:52 AM), <http://www.wearecentralpa.com/news/officials-experience-learning-curve-with-libres-law/902859014> [<https://perma.cc/MK9L-8FF3>] (accessed Aug. 3, 2018).

<sup>64</sup> *Id.*

<sup>65</sup> S.B. 1884, 100th Gen. Assemb., Reg. Sess. (Ill. 2017). *Dogs and Cats No Longer Used for Research May Have a Chance for a Loving Home*, NAT'L ANTI-VIVISECTION SOC'Y (updated Aug. 30, 2017) <https://www.navs.org/dogs-and-cats-no-longer-used-for-research-may-have-a-chance-for-a-loving-home-2/#.WlZrbainHZs> [<https://perma.cc/SYEM-ZAJN>] (accessed Aug. 3, 2018).



assess the health of the dog or cat and determine whether it is suitable for adoption.”<sup>66</sup> Once an animal is determined suitable for adoption, the research facility must make reasonable efforts to offer them for adoption,<sup>67</sup> as opposed to the regular practice of euthanizing animals after they are no longer being used for research.<sup>68</sup> The research facilities covered by this new law are specifically institutions of higher education within the state that receive public funds for animal research.<sup>69</sup> This means that private research facilities are not required to have an adoption policy. This bill, along with those introduced and passed in other states, was sponsored primarily by the Beagle Freedom Project, an organization that focuses on rescuing and rehoming retired lab animals as well as introducing and advocating for legislation that requires the release of adoptable retired research animals.<sup>70</sup> These bills are often called “Beagle Freedom Bills,” because the beagle is one of the most common dogs bred and used for research, due to their docile and loving nature, in addition to their medium stature.<sup>71</sup>

A stricter version of the most recent bill, HB 4297, had been introduced in 2016. This version of the bill required the state funded research facility to offer dogs and cats for adoption before euthanasia.<sup>72</sup> In 2016, the legislation stalled because of strong opposition to the bill by affected institutions like the University of Illinois.<sup>73</sup> The University argued that they already had adoption procedures in place, and therefore the bill was a “solution in search of a problem.”<sup>74</sup> Other opponents of the bill were concerned that the passage of the bill was a “feel good” measure that merely played into the view that research animals are mistreated, and that the bill would potentially lead to a slippery slope

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<sup>66</sup> 510 ILL. COMP. STAT. 93/10 (2018).

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

<sup>68</sup> See *Illinois Legislation Requires Animal Adoption Over Research*, WAND 17 (Apr. 19, 2016, 1:20 PM), <http://www.wandtv.com/story/31765099/illinois-legislation-requires-animal-adoption-over-research> [<https://perma.cc/D3WH-ZK49>] (accessed Aug. 3, 2018) (stating that the legislation “gives animals a chance to get adopted instead of getting euthanized”).

<sup>69</sup> 510 ILL. COMP. STAT. 93/5 (2018).

<sup>70</sup> See *About BFP*, BEAGLE FREEDOM PROJECT, <http://bfp.org/about-bfp/> [<https://perma.cc/B8HF-8TWD>] (accessed Aug. 3, 2018) (“Beagle Freedom Project . . . has passed its signature Beagle Freedom Law, mandating the public adoption of healthy dog and cat survivors of experiments in California, Nevada, Minnesota, Illinois, New York, and Connecticut.”).

<sup>71</sup> *Dogs in Research*, NAT’L ANTI-VIVISECTION SOC’Y, <https://www.navs.org/what-we-do/keep-you-informed/science-corner/animals-used-in-research/dogs-in-research/#.Wle7EqinHZs> [<https://perma.cc/2M6N-Y5L8>] (accessed Aug. 3, 2018). See also BEAGLE FREEDOM PROJECT, *supra* note 70 (explaining why beagles are the ideal animals to use in testing).

<sup>72</sup> H.B. 4297, 99th Gen. Assemb., Reg. Sess. (Ill. 2016).

<sup>73</sup> Celeste Bott, *U. of I., Lawmaker Spar Over Research on Dogs, Cats*, CHI. TRIBUNE (May 23, 2016, 8:56 PM), <http://www.chicagotribune.com/news/local/politics/ct-university-of-illinois-animal-research-met-20160523-story.html> [<https://perma.cc/479X-LZ6Y>] (accessed Aug. 3, 2018).

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

towards the overregulation of research facilities.<sup>75</sup> The University of Illinois did in fact adopt the majority of their research cats and dogs out to faculty and students over the period between 2011 and 2015.<sup>76</sup> They expressed concern about the future well-being of an animal if the University was not responsible for choosing the new homes.<sup>77</sup> Additionally, there were concerns that animals that were adopted out would be “used in propaganda” against animal testing.<sup>78</sup> However, Senator Holmes, who sponsored the bill, argued instead that the University didn’t support the measure because of a vendetta it has against the Beagle Freedom Project, in addition to a desire to keep its animal testing operations out of the spotlight.<sup>79</sup> Given this opposition, possibly among other reasons, the 2016 bill died in committee.<sup>80</sup> Senator Holmes re-introduced the bill in February of 2017, where it was passed and signed by the governor in August.<sup>81</sup> This final version of the bill requires that the facility only make *reasonable efforts* to adopt dogs or cats once the facility’s veterinarians have determined that the animal is suitable for adoption.<sup>82</sup> Similar bills, like those in Minnesota<sup>83</sup> and California,<sup>84</sup> are distinguishable from Illinois’ bill in that they require the animals to be offered for adoption to a rescue organization, rather than the facility being required only to make a reasonable effort.

Beagle Freedom Project, National Anti-Vivisection Society, and other animal welfare groups have supported similar measures in other states in 2017.<sup>85</sup> “Beagle Freedom Bills” are pending in Delaware, New

<sup>75</sup> *Talking Points for Animal Research Adoption Bills*, NAT’L ASS’N FOR BIOMEDICAL RES., [http://www.nabr.org/wp-content/uploads/2017/03/Talking-Points-Mandatory-Dog-and-Cat-Adoption-Bill\\_template.pdf](http://www.nabr.org/wp-content/uploads/2017/03/Talking-Points-Mandatory-Dog-and-Cat-Adoption-Bill_template.pdf) [<https://perma.cc/7MXK-QUAM>] (accessed Aug. 3, 2018).

<sup>76</sup> See Bott, *supra* note 73 (providing statistics showing seventy-three percent of cats and eighty percent of dogs were adopted).

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

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

<sup>79</sup> Ken Lowe, *In the News: ‘Beagle Bill’ Protecting University of Illinois Test Animals Prompts Legislative Dispute*, ST. LOUIS POST-DISPATCH (May 24, 2016), reprinted in Articles, Sen. Linda Holmes (May 25, 2016, 1:35 PM), <http://senatorholmes.com/component/content/article?id=116:in-the-news-beagle-bill-protecting-university-of-illinois-test-animals-prompts-legislative-dispute> [<https://perma.cc/GG5F-329T>] (accessed Aug. 3, 2018).

<sup>80</sup> *Bill Status of HB4297: 99th General Assembly*, ILL. GEN. ASSEMB., <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=4297&GAID=13&DocTypeID=HB&SessionID=88&GA=99> [<https://perma.cc/LK8Y-8KY>] (accessed Aug. 3, 2018).

<sup>81</sup> *Bill Status of SB1884, 100th General Assembly*, ILL. GEN. ASSEMB., <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1884&GAID=14&DocTypeID=SB&LegID=&SessionID=91&SpecSess=&Session=&GA=100> [<https://perma.cc/LU5N-YBPA>] (accessed Aug. 3, 2018).

<sup>82</sup> 510 ILL. COMP. STAT. 93/10 (2018).

<sup>83</sup> MINN. STAT. § 135A.191 (2015).

<sup>84</sup> CAL. EDUC. CODE § 66017.7 (West 2016).

<sup>85</sup> *Help Pass the Beagle Bill*, BEAGLE FREEDOM PROJECT, <https://bfp.org/petition/> [<https://perma.cc/F8YZ-KC57>] (accessed Aug. 3, 2018); *The Truth About Cats and Dogs*, NAT’L ANTI-VIVISECTION SOC’Y, <https://www.navs.org/thetruth-cats-dogs/#.WoxcNWaZPYI> [<https://perma.cc/4S32-T2JB>] (accessed Aug. 3, 2018).

Jersey, Iowa, and Massachusetts.<sup>86</sup> Bills have been introduced, but were unsuccessful in Hawaii, Maine, Maryland, North Dakota, Rhode Island, and Texas.<sup>87</sup>

## VII. TRAVELING PERFORMANCE BANS

Elephants had a big year in 2017. Riding on the tails of Ringling Brothers Circus' 2016 decision to retire their elephants,<sup>88</sup> both New York<sup>89</sup> and Illinois<sup>90</sup> passed elephant performance bans. The Illinois law amends its criminal code to make the use of an Asian or African elephant in any traveling act a Class A misdemeanor.<sup>91</sup> A traveling act is defined as "any performance of animals where animals are transported to, from, or between locations for the purpose of a performance . . . ."<sup>92</sup> This act does not apply to any non-mobile or permanent institution.<sup>93</sup> The New York law, called the Elephant Protection Act, on the other hand, bans elephants from use in any entertainment act, and makes no mention of mobility or travel.<sup>94</sup> The only exceptions to this prohibition are institutions accredited by the Association of Zoos and Aquariums (AZA) and wildlife sanctuaries.<sup>95</sup> Violation of the law carries a \$1,000 per violation civil penalty and no criminal penalties.<sup>96</sup>

The use of elephants in circuses and other traveling shows has become more controversial in recent years, due in large part to the increase in public awareness of the conditions under which circus animals live.<sup>97</sup> Countless undercover investigations of circuses have revealed widespread abuse of elephants in particular.<sup>98</sup> Elephants are trained with the use of bull hooks, which are rods tipped with a metal

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<sup>86</sup> *Dogs and Cats No Longer Used for Research May Have a Chance for a Loving Home*, *supra* note 65.

<sup>87</sup> *Id.*

<sup>88</sup> See generally Kristin Henderson, *The Big Exit*, WASH. POST (Oct. 27, 2016), <http://www.washingtonpost.com/sf/style/2016/10/27/the-big-exit> [<https://perma.cc/Z6L6-78NT>] (accessed Aug. 3, 2018) (discussing the retirement of elephants from circuses).

<sup>89</sup> N.Y. AGRIC. & MKTS. LAW § 380 (McKinney 2019).

<sup>90</sup> 720 ILL. COMP. STAT. 5/48-11 (2018).

<sup>91</sup> *Id.*

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

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

<sup>94</sup> Press Release, Governor Andrew M. Cuomo (D-N.Y.), Governor Cuomo Signs Legislation to Protect Elephants, (Oct. 19, 2017), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-protect-elephants> [<https://perma.cc/HXK9-NA2W>] (accessed Aug. 3, 2018).

<sup>95</sup> N.Y. AGRIC. & MKTS. LAW § 380.

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

<sup>97</sup> Alvin Chang, *On World Elephant Day, Meet Nosy and the 64 Other Elephants Who Still Perform in Circuses*, VOX (June 1, 2016, 9:50 AM), <https://www.vox.com/2016/5/30/11760880/circus-elephants> [<https://perma.cc/3XKG-ARB7>] (accessed Aug. 3, 2018).

<sup>98</sup> Deborah Nelson, *The Cruellest Show on Earth*, MOTHER JONES (Dec. 2011), <http://www.motherjones.com/environment/2011/10/ringling-bros-elephant-abuse/> [<https://perma.cc/A286-62N4>] (accessed Aug. 3, 2018).

pike and sharp curved point, much like a fireplace poker.<sup>99</sup> In some of the worst reported abuses, elephants are repeatedly struck and beaten with bull hooks.<sup>100</sup> The USDA Animal Welfare Regulations, which govern the handling of circus animals, state that “physical abuse shall not be used to train, work, or otherwise handle animals.”<sup>101</sup> Despite this, the USDA has shown a distinct reluctance to find that the use (or overuse) of bull hooks violates this or any other AWA provision.<sup>102</sup> Additionally, the grueling traveling schedule of circuses leads to chronic foot and limb problems, which for an animal that must hold its four-ton weight on its feet constantly, means constant pain.<sup>103</sup> In mid-2016, it was reported that there were at least sixty-five elephants owned by circuses and traveling acts.<sup>104</sup> All of this information, coupled with the fact that elephants are highly intelligent, social creatures and are therefore susceptible to not only physical but mental anguish, paints a grim picture of life with the circus.

In Illinois, SB 1342, prohibiting use of elephants in a traveling act, was sponsored by Senator Holmes, who also sponsored the Beagle Freedom Bill and the Divorce Custody Bill.<sup>105</sup> Senator Holmes stated that “[t]raveling circuses are not able to properly care for elephants and, as a result, elephant exhibitions in Illinois have been found to be in violation of the Federal Animal Welfare Act several times.”<sup>106</sup> State Representative Tom Morrison was one of fourteen representatives who voted against the bill in the house, citing concern that other animals may subsequently be banned from circuses as a reason for his vote.<sup>107</sup> He stated, “I think these sorts of exhibitions, there is value in them—without defending every circus that’s out there.”<sup>108</sup> For obvious reasons, traveling circuses that make stops in Illinois with their elephants also opposed the ban, and urged their fans via social media to contact

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<sup>99</sup> *Bullhook F.A.Q.*, AUSTIN FOR CRUELTY FREE ENT., <http://crueltyfreeaustin.org/bullhook-f-a-q/> [<https://perma.cc/3VCA-YRQY>] (accessed Aug. 3, 2018).

<sup>100</sup> Nelson, *supra* note 98.

<sup>101</sup> Animal Welfare Regulations, 9 C.F.R. § 2.131 (2016).

<sup>102</sup> Trevor J. Smith, *Bullhooks and the Law: Is Pain and Suffering the Elephant in the Room?*, 19 ANIMAL L. 423, 428–29 (2013) (discussing how the inconsistent enforcement has done little for “determining the appropriate use of bull hooks under the AWA, much less whether their use is lawful under the Act”).

<sup>103</sup> See Nelson, *supra* note 98 (calculating that the elephants traveled twenty-six hours straight, on average, with five elephants chained together in each train boxcar).

<sup>104</sup> Chang, *supra* note 97.

<sup>105</sup> S.B. 1342, 100th Gen. Assemb., (Ill. 2017 and 2018); see also Lowe, *supra* note 79 (showing Sen. Holmes sponsored the divorce custody legislation); see also Vivanco-Prenigaman, *supra* note 32 (showing Sen. Holmes sponsored the beagle bill).

<sup>106</sup> Chacour Koop, *Will the Show Go On After Illinois Bans Circus Elephants?*, DAILY HERALD (Sept. 3, 2017, 7:03 AM), <http://www.dailyherald.com/news/20170903/will-the-show-go-on-after-illinois-bans-circus-elephants> [<https://perma.cc/VWH8-4AJ9>] (accessed Aug. 3, 2018).

<sup>107</sup> Alex Ruppenthal, *Circus Elephants to Take Final Bow in Illinois*, CHI. TONIGHT (Aug. 14, 2017, 3:56 PM), <http://chicagotonight.wttw.com/2017/08/14/circus-elephants-take-final-bow-illinois> [<https://perma.cc/9RMT-S2UE>] (accessed Aug. 3, 2018).

<sup>108</sup> *Id.*

their representatives to voice their opposition.<sup>109</sup> Despite this, the bill passed with a large majority in both houses and was signed by Governor Bruce Rauner on August 11.<sup>110</sup>

New York followed shortly after Illinois in passing Senate Bill S2098B, also known as the Elephant Protection Act.<sup>111</sup> The bill's stated purpose is "to safeguard all elephants from the physical and psychological harm inflicted upon them by living conditions, treatment, and cruel methods that are necessary to train elephants to perform in entertainment acts."<sup>112</sup> Governor Andrew Cuomo, who signed the bill on October 19, said that "the use of elephants in these types of settings is dangerous to their health and potentially abusive," and "[t]he Elephant Protection Act furthers this administration's efforts to fight animal cruelty, and create a stronger, more humane New York."<sup>113</sup>

New Jersey<sup>114</sup> has recently come one step further by passing Nosey's Law, which, if it had been signed by Governor Chris Christie, would have banned all wild animals from circuses.<sup>115</sup> The law, which was introduced in September of 2016,<sup>116</sup> was named after an elephant who is reported to have been forced to continue to travel the country and give rides to humans despite severe arthritis that had likely caused her considerable suffering.<sup>117</sup> The bill had originally been an elephant performance ban, like the bills in Illinois and New York, until the bill was amended in early December by Assembly Sponsor Raj Mukherji to include "other wild or exotic animals" after elephants.<sup>118</sup>

<sup>109</sup> Carson & Barnes Circus, *Attention Illinois Residents*, FACEBOOK (May 16, 2017), <https://www.facebook.com/CircusCarson/posts/1481743195211996:0> [<https://perma.cc/966D-4YAU>] (accessed Aug. 3, 2018).

<sup>110</sup> *Bill Status of SB1342: 100th General Assembly*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=1342&GAID=14&SessionID=91&LegID=103659> [<https://perma.cc/P3QQ-6MDB>] (accessed Aug. 3, 2018).

<sup>111</sup> S.B. S2098B, 2017–2018 Leg. Sess. (N.Y. 2017) <https://www.nysenate.gov/legislation/bills/2017/s2098/amendment/b> [<https://perma.cc/PEN2-72MX>] (accessed Aug. 3, 2018).

<sup>112</sup> *Id.*

<sup>113</sup> Press Release, *supra* note 94.

<sup>114</sup> See *Humane State Ranking 2017*, *supra* note 2 (ranking New Jersey eighth in animal welfare).

<sup>115</sup> Kirsten Peek, *Outgoing NJ Gov. Chris Christie Rejects Wild Animal Acts Bill*, HUMANESOCIETY U.S. (Jan. 16, 2018), [http://www.humanesociety.org/news/press\\_releases/2018/01/nj-rejects-wild-animal-acts-bill.html?credit=web\\_id93480558](http://www.humanesociety.org/news/press_releases/2018/01/nj-rejects-wild-animal-acts-bill.html?credit=web_id93480558) [<https://perma.cc/LS6W-3GA2>] (accessed Aug. 3, 2018).

<sup>116</sup> S.B. 2508, 217th Leg., Reg. Sess. (N.J. 2016).

<sup>117</sup> S. ECON. GROWTH COMM., STATEMENT TO SENATE NO. 2508: STATE OF NEW JERSEY (N.J. 2016), [http://www.njleg.state.nj.us/2016/Bills/S3000/2508\\_S1.pdf](http://www.njleg.state.nj.us/2016/Bills/S3000/2508_S1.pdf) [<https://perma.cc/7RWE-UTEX>] (accessed Aug. 3, 2018); see also Aaron Cantrell, *Nosey the Elephant's Owners Arrested on Animal Cruelty Charges*, WHNT NEWS 19 (Dec. 15, 2017, 7:25 PM), <http://whnt.com/2017/12/15/custody-battle-continues-for-nosey-the-elephant/> [<https://perma.cc/J9M3-TRV4>] (accessed Aug. 3, 2018) (reporting that Nosey's owners were charged with animal cruelty and her owners are fighting over custody for her).

<sup>118</sup> *Id.*; Alicia Graef, *Victory! New Jersey Just Became the First State to Ban All Wild Animals in Circuses*, CARE2 (Jan. 10, 2018), <https://www.care2.com/causes/victory-new->

The legislature overwhelmingly approved of this measure, passing it 66-2-2 in the General Assembly and 31-0 in the State Senate.<sup>119</sup> However, outgoing Governor Christie ‘pocket vetoed’ Nosey’s Law by refusing to sign it in the final days of his tenure as governor.<sup>120</sup> The sponsors of the bill plan to reintroduce a revised version that, if passed, will wait for a signature by the current governor, Phil Murphy.<sup>121</sup> This could make New Jersey the first state to ban animals other than elephants in traveling animal acts. Various major cities have passed ordinances aimed at protecting circus animals. For example, Los Angeles voted to ban all wild animal acts in circuses in April of 2017 and was followed in June 2017 by New York City with an identical ban.<sup>122</sup> San Francisco took an additional step in banning any wild and exotic animals from any form of public amusement, including movie sets and parades.<sup>123</sup>

Restricting or banning circus acts that include animals seems to be the new norm around the world. Many nations in Europe have banned animal acts and several Latin American countries, including Mexico and Peru, have done so as well in recent years.<sup>124</sup> It seems as though the recent trend in the United States is just the beginning.

## VIII. BIG AGRICULTURE

The past decade has been marked by debates over ‘ag-gag’ legislation. These bills are meant to punish whistleblowers who investigate and report abuse on factory farms.<sup>125</sup> While seventeen states have had anti-whistleblower laws defeated in the state legislatures, and three states have had their laws ruled unconstitutional, eight states cur-

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jersey-just-became-the-first-state-to-ban-all-wild-animals-in-circuses.html [https://perma.cc/J5MH-7LQW] (accessed Aug. 3, 2018).

<sup>119</sup> *Roll Call: NJ S2508 — 2016-2017 — Regular Session*, LEGISCAN, https://legiscan.com/NJ/rollcall/S2508/id/684387 [https://perma.cc/EL34-YL47] (accessed Aug. 3, 2018).

<sup>120</sup> Peek, *supra* note 115.

<sup>121</sup> *Id.*

<sup>122</sup> Wayne Pacelle, *Breaking News: New York City Bans Use of Wild Animals in Circuses*, HUMANE SOC’Y U.S. (June 21, 2017), https://blog.humanesociety.org/wayne/2017/06/breaking-news-new-york-city-bans-use-wild-animals-circuses.html [https://perma.cc/UDM6-4GFL] (accessed Aug. 3, 2018).

<sup>123</sup> Emmett Berg, *San Francisco Board Approves Wild Animal Performance Ban*, REUTERS (Apr. 21, 2015, 2:21 PM), https://www.reuters.com/article/us-usa-circus-california/san-francisco-board-approves-wild-animal-performance-ban-idUSKBN0NC2G720150421 [https://perma.cc/AS7P-E8WC] (accessed Aug. 3, 2018).

<sup>124</sup> Karin Brulliard, *Many Countries Ban Circuses with Wild Animals. These Lawmakers Want the U.S. to Follow Suit*, WASH. POST (Mar. 29, 2017), https://www.washingtonpost.com/news/animalia/wp/2017/03/29/many-countries-ban-circuses-with-wild-animals-these-lawmakers-want-the-u-s-to-follow-suit/?utm\_term=.b7380a17f8fa [https://perma.cc/NLN4-KX87] (accessed Aug. 3, 2018).

<sup>125</sup> *What is Ag-Gag Legislation?*, ASPCA, https://www.aspc.org/animal-protection/public-policy/what-ag-gag-legislation [https://perma.cc/6FL6-WPPV] (accessed Aug. 3, 2018).

rently have laws on the books.<sup>126</sup> Texas<sup>127</sup> has not previously introduced the typical ag-gag legislation; however, in June 2017, a law was passed that made it illegal to use unmanned aerial vehicles (drones) to take photos or video over a concentrated animal feeding operation (CAFO).<sup>128</sup> The law amends an existing section of the Texas Code that made it illegal to fly a drone over a “critical infrastructure facility.”<sup>129</sup> CAFOs were added to the list of “critical infrastructure facilities.”<sup>130</sup>

Proponents of the bill argue that operating a drone over a CAFO has “adverse effects on the livestock, thus reducing their value.”<sup>131</sup> They also argue that there is concern over operators using drones to poison food supplies at feed lots.<sup>132</sup> Those that oppose the bill argued that the bill was largely unnecessary because it was already a crime, punishable by fine, to fly drones over private property to capture images.<sup>133</sup> They argue that raising the penalty to include possible jail time would be an excessive penalty, and that there are more effective ways to address the concerns raised by the supporters.<sup>134</sup> Opponents ranged from Sierra Club members to proponents of Freedom of Information, while the supporters were primarily law enforcement and industry.<sup>135</sup>

Drones have proven to be an important investigatory tool, particularly for those wishing to investigate the environmental impacts CAFOs have on the landscape. For example, in 2014, a filmmaker flew a drone over a pig farm in North Carolina and took aerial footage of massive waste lagoons and buildings that house the ‘farm’s’ pig population.<sup>136</sup> The footage sparked many reactions from the press.<sup>137</sup> An-

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

<sup>127</sup> See *Humane State Ranking 2017*, *supra* note 2 (ranking Texas twenty-ninth in animal welfare).

<sup>128</sup> H.B. 1643, 85th Legis. Reg. Sess. (Tex. 2017).

<sup>129</sup> TEX. GOV'T CODE ANN. § 423.0045 (West 2017).

<sup>130</sup> *Id.*

<sup>131</sup> HOMELAND SEC. AND PUB. SAFETY COMM., BILL ANALYSIS, H. 85-18764, Reg. Sess. (Tex. 2017), <http://www.legis.state.tx.us/tlodocs/85R/analysis/pdf/HB01643H.pdf> [<https://perma.cc/JAS2-VUAV>] (accessed Aug. 3, 2018).

<sup>132</sup> H. RESEARCH ORG., BILL ANALYSIS, H.B. 1643 (Tex. 2017) <http://www.hro.house.state.tx.us/pdf/ba85r/hb1643.pdf> [<https://perma.cc/959R-SZXD>] (accessed Aug. 3, 2018).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*; see also *Texas Bill Would Ban Drones at CAFOs*, FARM & RANCH FREEDOM ALLIANCE (Apr. 3, 2018), <http://farmandranchfreedom.org/drones-and-cafos/> [<https://perma.cc/RQD8-FNGX>] (accessed Aug. 3, 2018) (explaining excessiveness of the penalty and other reasons for opposing the bill).

<sup>135</sup> S. COMM. ON CRIMINAL JUST., WITNESS LIST, H.B. 1643, 85th Reg. Sess. (2017), [ftp://ftp.legis.state.tx.us/bills/85R/witlistbill/html/house\\_bills/HB01600\\_HB01699/HB01643S.htm](ftp://ftp.legis.state.tx.us/bills/85R/witlistbill/html/house_bills/HB01600_HB01699/HB01643S.htm) [<https://perma.cc/9FVK-2PQS>] (accessed Aug. 3, 2018).

<sup>136</sup> *Speciesism the Movie, Spy Drones Expose Smithfield Foods Factory Farms*, YOUTUBE (Dec. 17, 2014), <https://www.youtube.com/watch?v=ayGJ1YSfDXs> [<https://perma.cc/S4VZ-EZBD>] (accessed Aug. 3, 2018).

<sup>137</sup> See, e.g., Yelena Sukhoterina, *Drone Footage Exposes What Happens at the Largest Pork Producer in the U.S.—Discovers a Toxic “Lake” of . . .*, ALTHEALTH WORKS (Nov. 7, 2017), <https://althealthworks.com/14132/drone-footage-exposes-smithfield-foods-yelena/> [<https://perma.cc/2AHG-4UVF>] (accessed Aug. 3, 2018) (detailing the footage

other journalist, Will Potter, raised money on a crowdsourcing platform in 2014 to buy drones and other equipment to fly over CAFOs.<sup>138</sup> Potter specifically framed his investigatory methods as a way to get around ag-gag laws.<sup>139</sup> Texas seems to be the first state to frame CAFOs as critical infrastructure, allowing the legislature to include them in drone restrictions.<sup>140</sup>

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from drones flown over Smithfield and other instances of using drones to fly over CAFOs); see, e.g., Robby Berman, *A Drone Flew Over a Pig Farm to Discover It's Not Really a Farm. It's Something Much More Disturbing.*, UPWORTHY (Dec. 28, 2017), <http://www.upworthy.com/a-drone-flew-over-a-pig-farm-to-discover-its-not-really-a-farm-its-something-much-more-disturbing> [https://perma.cc/2N5M-QGCF] (accessed Aug. 3, 2018) (summarizing the drone footage and explaining what the video shows); see, e.g., Erica Shaffer, *Smithfield 'Pleased' with Drone Footage*, MEAT + POULTRY (Jan. 21, 2015), [http://www.meatpoultry.com/articles/news\\_home/Business/2015/01/Smithfield\\_pleased\\_with\\_drone.aspx?ID=%7B907C73E0-381F-4941-B788-9226B634210A%7D&cck=1](http://www.meatpoultry.com/articles/news_home/Business/2015/01/Smithfield_pleased_with_drone.aspx?ID=%7B907C73E0-381F-4941-B788-9226B634210A%7D&cck=1) [https://perma.cc/TY9P-ZT7A] (accessed Aug. 3, 2018) (reporting that Smithfield is pleased with the footage shot by a drone over one of its facilities).

<sup>138</sup> Peggy Lowe, *Deploying Drones to Get an Overview of Factory Farms*, NPR (July 19, 2014, 12:09 PM), <https://www.npr.org/sections/thesalt/2014/07/19/332344201/deploying-drones-to-get-big-picture-of-factory-farms-from-above> [https://perma.cc/QY3T-XDVD] (accessed Aug. 3, 2018).

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

<sup>140</sup> *Texas Criminalizes Drone Flights Over Factory Farms*, ANIMAL EQUALITY (Jan. 6, 2017, 5:55 PM), [www.animalequality.net/node/1019](http://www.animalequality.net/node/1019) [https://perma.cc/2HEE-XH36] (accessed Aug. 3, 2018).