

# REVIEWS

## 2018 STATE LEGISLATIVE REVIEW

By  
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*There were several important changes to animal protection in the United States in 2018. California became the first state to ban cosmetic testing on animals and also made improvements for a handful of species used in factory farming. Prop 12 was passed, increasing minimum size standards for these species, but the most drastic change was the banning of eggs produced by egg-laying hens housed in cages—effectively prohibiting the use of cages for these birds in the state and the sale of eggs from producers that use cages in production facilities out of state. Florida and New Jersey made influential advancements for animals by banning greyhound racing and prohibiting traveling circuses from using wild animals in shows, respectively. Although some states introduced legislation that can potentially harm animals, like Iowa’s conventional egg law, there was a general wave of strengthening animal protection among the states that many are hopeful will carry over into 2019.*

I. INTRODUCTION . . . . .	448
II. LABORATORY COSMETIC TESTING . . . . .	448
III. GREYHOUND RACING . . . . .	451
IV. TRAVELING CIRCUS ANIMALS . . . . .	453
V. OUTDOOR DOG PROTECTIONS . . . . .	455
VI. FARM ANIMAL CONFINEMENT . . . . .	457
VII. FOOD ASSISTANCE PROGRAM REQUIREMENTS . . . . .	459
VIII. ANIMAL WELFARE ADVANCEMENT . . . . .	461

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## I. INTRODUCTION

In 2018, America saw the installation of new political leaders,<sup>1</sup> a mid-term election<sup>2</sup> and animal activism.<sup>3</sup> Legislation passed to protect animals ranging from rabbits and rodents, to dogs, and to wild or exotic animals. States took some of the first steps toward eventually outlawing scientific experimentation, racing, and entertainment exploitation. This review discusses some of the animal-related legislation individual states passed in 2018.

## II. LABORATORY COSMETIC TESTING

In 2018, California was deemed the best state in the nation for animal welfare by the Humane Society of the United States (HSUS)<sup>4</sup> and was placed in the “top tier” by the Animal Legal Defense Fund (ALDF).<sup>5</sup> This year, California became the first American state to ban cosmetic animal testing with the California Cruelty-Free Cosmetics Act.<sup>6</sup> This Act, when effectuated, will prohibit the import, sale, or offer of “any cosmetic, if the cosmetic was developed or manufactured using an animal test that was conducted or contracted by the manufacturer, or any supplier of the manufacturer . . . .”<sup>7</sup> The cosmetics in question range from “beautifying” products, like makeup, to hygiene products, such as deodorant and shampoo.<sup>8</sup> Currently, the Federal Drug Administration neither requires nor bans animal testing for cosmetic products; it merely suggests that manufacturers “employ whatever testing

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<sup>1</sup> See Brent Johnson, *Phil Murphy N.J. Governor Inauguration Date 2018*, NJ.COM (Jan. 16, 2018), [https://www.nj.com/politics/index.ssf/2018/01/phil\\_murphy\\_nj\\_inauguration\\_date\\_gov-ernor\\_inaugural\\_ball\\_chris\\_christie.html](https://www.nj.com/politics/index.ssf/2018/01/phil_murphy_nj_inauguration_date_gov-ernor_inaugural_ball_chris_christie.html) [<https://perma.cc/XK5H-MANP>] (accessed Apr. 11, 2019) (describing Phil Murphy’s inauguration as New Jersey’s 56th governor); see also *Virginia Gubernatorial Inaugural Address*, CSPAN (Jan. 13, 2018), <https://www.c-span.org/video/?439887-1/virginia-gubernatorial-inaugural-address> [<https://perma.cc/J67T-UNNH>] (accessed Apr. 11, 2019) (describing Ralph Northam’s inaugural address as Virginia’s 73rd governor); Kyle Hopkins, *Dunleavy Sworn in as Governor After a Very Alaska Travel Glitch*, ANCHORAGE DAILY NEWS (Dec. 3, 2018), <https://www.adn.com/alaska-news/rural-alaska/2018/12/03/theres-never-been-an-alaska-inauguration-like-this-noorvik-welcomes-dunleavy/> [<https://perma.cc/V89Z-JVPE>] (accessed Apr. 11, 2019) (describing Mike Dunleavy’s inauguration as governor).

<sup>2</sup> See *Midterm Congressional, State, and Local Elections*, USA.GOV, <https://www.usa.gov/midterm-state-and-local-elections> [<https://perma.cc/K3V8-ADKT>] (accessed Apr. 11, 2019) (describing the various 2018 midterm elections).

<sup>3</sup> See, e.g., *Animal Liberation Conference*, ANIMAL LIBERATION CONFERENCE, <https://www.animalliberationconference.com/> [<https://perma.cc/3RRV-GPEK>] (accessed Apr. 11, 2019) (“A conference for animal rights activists.”).

<sup>4</sup> *Humane State Ranking 2018: Total Scores*, HUMANE SOC’Y U.S., <https://blog.humane-society.org/wp-content/uploads/2018/12/Total-Scores-2018-FINAL-1.pdf> [<https://perma.cc/Y5CP-M82M>] (accessed Apr. 11, 2019).

<sup>5</sup> *2018 U.S. Animal Protection Laws State Rankings*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/2018-us-state-rankings/> [<https://perma.cc/4EHP-6S8P>] (accessed Apr. 11, 2019).

<sup>6</sup> CAL. CIV. CODE § 1834.9.5 (West 2018).

<sup>7</sup> *Id.* at § 1834.9.5(a).

<sup>8</sup> *Id.* at § 1834.9.5(b)(2).

is appropriate and effective for substantiating the safety of their products.”<sup>9</sup> Currently, Humane Society International estimates that 115 million animals are used in testing each year, although the precise number cannot be determined due to underreporting.<sup>10</sup>

The bill’s author, California Senator Cathleen Galgiani, believed the need for the bill stemmed from the advent of non-animal testing methods which are “cheaper, faster, and can better predict human reactions . . . .”<sup>11</sup> These pioneering methods, called “organ chips” or “organs-on-chips,” are scientifically engineered to be “living, three-dimensional cross-sections of major functional units of whole living organs.”<sup>12</sup> These cells are human- and organ-specific, and predict human responses in a more reliable way, because “traditional animal models often do not accurately mimic human pathophysiology.”<sup>13</sup> Laboratory testing is most often performed on guinea pigs and rabbits,<sup>14</sup> though the true numbers are unknown.<sup>15</sup> Under the Animal Welfare Act, labs are not required to report data on certain animals excluded from the Act, such as rats and mice bred for research.<sup>16</sup> But the medical reactions of these animals are often dissimilar to the reactions humans would have to the same tested substance.<sup>17</sup> The Wyss Institute at Harvard University—the laboratory that first created these organ chips—mentions several reasons for the necessity of this technology, including economic efficiency and personalized medicine, and notes that “innumerable animal lives are lost” due to laboratory testing.<sup>18</sup> Another scientific organization, the Physicians Committee for Responsible Medicine (PCRM), agreed: “SB 1249 is backed by solid science.”<sup>19</sup> The Committee co-sponsored the bill with Senator Galgiani, and PCRM Regulatory Policy Director Elizabeth Baker went on to say,

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<sup>9</sup> *Animal Testing & Cosmetics*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/cosmetics/scienceresearch/producttesting/ucm072268.htm> [<https://perma.cc/9ZY7-FB8D>] (accessed Apr. 11, 2019).

<sup>10</sup> *About Animal Testing*, HUMANE SOC’Y INT’L, [http://www.hsi.org/campaigns/end\\_animal\\_testing/qa/about.html](http://www.hsi.org/campaigns/end_animal_testing/qa/about.html) [<https://perma.cc/9S74-WCCW>] (accessed Apr. 11, 2019).

<sup>11</sup> *Animal Testing: Cosmetics: Hearing on SB 1249 Before the S. Judiciary Comm.*, 2017-2018 Leg. Sess. (statement of Sen. Galgiani), [https://leginfo.legislature.ca.gov/faces/bill-AnalysisClient.xhtml?bill\\_id=201720180SB1249](https://leginfo.legislature.ca.gov/faces/bill-AnalysisClient.xhtml?bill_id=201720180SB1249) [<https://perma.cc/YZG3-RG9V>] (accessed Apr. 11, 2019) (follow link to “4/23/18 - Senate Judiciary”).

<sup>12</sup> *Human Organs-on-Chips*, WYSS INST. FOR BIOLOGICALLY INSPIRED ENGINEERING, <https://wyss.harvard.edu/technology/human-organs-on-chips/> [<https://perma.cc/PC7G-NAJU>] (accessed Apr. 11, 2019).

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

<sup>14</sup> *Which Animals Are Used*, AM. ANTI-VIVISECTION SOC’Y, <http://aavs.org/animals-science/animals-used/> [<https://perma.cc/JC9B-6W75>] (accessed Apr. 11, 2019).

<sup>15</sup> *About Animal Testing*, *supra* note 10.

<sup>16</sup> 7 U.S.C. § 2132 (2014).

<sup>17</sup> *Human Organs-on-Chips*, *supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *California Cruelty-Free Cosmetics Act Attracts a Crowd*, PHYSICIANS COMMITTEE FOR RESPONSIBLE MED. (Aug. 16, 2018), <https://www.pcrm.org/news/news-releases/california-cruelty-free-cosmetics-act-attracts-crowd> [<https://perma.cc/T9PP-AJ47>] (accessed Apr. 11, 2019).

“Many effective nonanimal methods are available for assessing the safety of cosmetics in a cruelty-free manner.”<sup>20</sup>

In addition to the incorporation of new scientific methods, the bill is also aimed towards social consciousness and improving consumer relations. In a written comment Senator Galgiani submitted during the bill’s proposal, she referenced a 2015 Nielsen poll showing that the phrase “‘not tested on animals’ was the most important consumer packaging claim for respondents across all age groups.”<sup>21</sup> That same study showed that 43% of consumers surveyed would be willing to pay more for products that are not tested on animals.<sup>22</sup> The bill’s other major co-sponsor, Social Compassion in Legislation (SCL), hopes that California’s ban will serve as model legislation for other U.S. states.<sup>23</sup> SCL founder Judie Mancuso puts a twist on an old phrase: “So goes California, so goes the world.”<sup>24</sup> With the passage of this bill, California joins the European Union (E.U.) and just a handful of other countries that have enacted animal cosmetic testing bans.<sup>25</sup> Like the E.U. regulation,<sup>26</sup> however, the California law leaves open a loophole that allows animal-tested cosmetic products to stay on the market.<sup>27</sup> The prohibition does not apply to ingredients that are required to be tested on animals for non-cosmetic use, such as pharmaceuticals, or “testing to ensure the chemical does not cause cancer.”<sup>28</sup> The bill further notes that the prohibition does not apply to “product[s] or ingredient[s] subject to requirements of . . . the Federal Food, Drug, and Cosmetic Act.”<sup>29</sup> Additionally, the bill carves out specific exceptions for markets that require animal testing by law.<sup>30</sup> Even after a change in policy in 2014, the Chinese government requires that all imported “special use” cosmetics (products which make a functional claim) intended to be sold

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<sup>20</sup> *Id.*

<sup>21</sup> *Animal Testing: Cosmetics*, *supra* note 11.

<sup>22</sup> James Russo, *Package This: Beauty Consumers Favor “Cruelty Free” and “Natural” Product Claims*, NIELSEN CO. (Mar. 24, 2015), <https://www.nielsen.com/us/en/insights/news/2015/package-this-beauty-consumers-favor-cruelty-free-and-natural-product-claims.html> [<https://perma.cc/K8YS-X8L5>] (accessed Apr. 11, 2019).

<sup>23</sup> *California Cruelty-Free Cosmetics Act Attracts a Crowd*, *supra* note 19.

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

<sup>25</sup> *Worldwide Progress*, NAT’L ANTI-VIVISECTION SOC’Y, <https://www.navs.org/what-we-do/keep-you-informed/legal-arena/product-testing/worldwide-progress/#.XD7Fr89Kj> [<https://perma.cc/4K5Q-UNZN>] (accessed Apr. 11, 2019).

<sup>26</sup> James Kanter, *E.U. Bans Cosmetics with Animal-Tested Ingredients*, N.Y. TIMES (Mar. 11, 2013), <https://www.nytimes.com/2013/03/11/business/global/eu-to-ban-cosmetics-with-animal-tested-ingredients.html> [<https://perma.cc/UJ52-E3F2>] (accessed Apr. 11, 2019).

<sup>27</sup> Mini Racker, *California Bill Banning Sale of Animal-Tested Cosmetics Goes to Governor After Last-Minute Changes Shrink its Scope*, L.A. TIMES (Sept. 1, 2018, 12:49 AM), <https://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-california-bill-banning-sale-of-1535787467-htmlstory.html> [<https://perma.cc/Q25G-CCGR>] (accessed Apr. 11, 2019).

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

<sup>29</sup> S.B. 1249, Ch. 899, 2017-18 Sess. (Cal. 2018).

<sup>30</sup> *Id.*

in stores must be tested on animals in a laboratory setting.<sup>31</sup> Products manufactured in China intended for foreign export do not require animal testing, nor do imported products intended for online retail only.<sup>32</sup> Advocates for the California bill hope the legislation will set an example and “encourage companies to fight for international changes.”<sup>33</sup> The law takes effect on January 1st, 2020.<sup>34</sup>

### III. GREYHOUND RACING

At the November midterm elections, Florida voters decided to end greyhound racing by a 69% “yes” vote on Florida Amendment 13.<sup>35</sup> The constitutional amendment provides: “The humane treatment of animals is a fundamental value of the people of the State of Florida.”<sup>36</sup> Codified as Article X, Section 32, the amendment bans the public from betting on races, and additionally, bans the racetrack operators from conducting races on which people have gambled.<sup>37</sup> The amendment leaves the legislature the task to “specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.”<sup>38</sup> The amendment will phase out dog racing with the aim of ending the practice by the end of 2020.<sup>39</sup> Though some organizations have already quit entirely, others intend to continue the practice as usual until the last possible day.<sup>40</sup> This amendment may factor into ALDF’s determination of Florida’s new ranking as the thirteenth best

<sup>31</sup> *China Implements Rule Change in First Step Towards Ending Animal Testing of Cosmetics*, HUMANE SOC’Y INT’L (June 30, 2014), [http://www.hsi.org/news/press\\_releases/2014/06/china-implements-rule-change-063014.html](http://www.hsi.org/news/press_releases/2014/06/china-implements-rule-change-063014.html) [<https://perma.cc/N4QB-M7ZK>] (accessed Apr. 11, 2019).

<sup>32</sup> *Id.*; see *Understanding China’s Animal Testing Laws*, ETHICAL ELEPHANT (Apr. 11, 2018), <https://ethicalelephant.com/understanding-china-animal-testing-laws/> [<https://perma.cc/DR86-ND2N>] (accessed Apr. 11, 2019) (presenting an infographic flow chart to determine which cosmetic products Chinese government require be animal-tested).

<sup>33</sup> Hilary Hanson, *California Just Officially Banned the Sale of Animal-Tested Cosmetics*, HUFFINGTON POST (Sept. 28, 2018), [https://www.huffpost.com/entry/california-just-officially-banned-the-sale-of-animal-tested-cosmetics\\_n\\_5b913ac6e4b0cf7b003d5c09](https://www.huffpost.com/entry/california-just-officially-banned-the-sale-of-animal-tested-cosmetics_n_5b913ac6e4b0cf7b003d5c09) [<https://perma.cc/2PUX-7AMJ>] (accessed Apr. 11, 2019).

<sup>34</sup> S.B. 1249(j).

<sup>35</sup> Kate Santich, *How Vote to End Florida Greyhound Racing Won and What Comes Next*, ORLANDO SENTINEL (Nov. 9, 2018), <https://www.orlandosentinel.com/news/politics/os-ne-florida-greyhound-racing-ban-support-overwhelming-20181109-story.html> [<https://perma.cc/YM7X-VTKW>] (accessed Apr. 11, 2019).

<sup>36</sup> FLA. CONST. art. X, § 32.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Rob Wile, *Florida Voters Put Dog Racing in America on its Last Legs*, MIAMI HERALD (Nov. 8, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/article2212935-95.html> [<https://perma.cc/ZU44-4JBR>] (accessed Apr. 11, 2019).

<sup>40</sup> Allie Raffa, *Florida’s Greyhound Racing Ban Sparks Battle Over Fate of 7,000 Unemployed Dogs*, FOX NEWS (Nov. 28, 2018), <https://www.foxnews.com/us/thousands-of-dogs-in-need-of-homes-after-florida-votes-to-ban-greyhound-racing> [<https://perma.cc/Y497-NGK3>] (accessed Apr. 11, 2019).

state in the nation for animal welfare.<sup>41</sup> This new ranking represents a modest jump from sixteenth place in 2017.<sup>42</sup> HSUS previously ranked Florida at thirteenth,<sup>43</sup> but this year dropped the state to fourteenth place.<sup>44</sup>

Supporters of Amendment 13 characterize greyhound racing as “cruel and inhumane.”<sup>45</sup> Casey Thiel of Grey2K, an organization which vocally opposes greyhound racing, commented that in Florida, one racing greyhound dies every three days; additionally, the American Society for the Prevention of Cruelty to Animals (ASPCA) echoes this claim in a collaborative report.<sup>46</sup> Florida Department of Business and Professional Regulation records indicate seventy-four greyhound deaths in the latter half of 2013, the year that death reporting became mandatory,<sup>47</sup> and 462 total deaths since the mandate was instituted.<sup>48</sup> Racing greyhounds are also subjected to drug use—dogs in the last five years tested positive for cocaine and its metabolic derivatives, and for Oxymorphone, a narcotic pain medication.<sup>49</sup>

With the attention the amendment has received, advocates predict this amendment marks the beginning of the end of greyhound racing

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<sup>41</sup> 2018 U.S. Animal Protection Laws State Rankings, *supra* note 5.

<sup>42</sup> 2017 U.S. Animal Protection Laws State Rankings, ANIMAL LEGAL DEF. FUND, [https://aldf.org/wp-content/uploads/2018/06/Rankings-Report-2017\\_FINAL.pdf](https://aldf.org/wp-content/uploads/2018/06/Rankings-Report-2017_FINAL.pdf) [<https://perma.cc/N45V-VUH7>] (accessed Apr. 11, 2019).

<sup>43</sup> *Humane State Rankings 2017: Total Scores*, HUMANE SOC’Y U.S., <https://blog.humanesoci-ety.org/wp-content/uploads/2018/01/Total-Scores-2017-3.pdf> [<https://perma.cc/L5U5-2CER>] (accessed Apr. 11, 2019).

<sup>44</sup> *Humane State Rankings 2018*, *supra* note 4.

<sup>45</sup> Mike DeForest, *Florida Voters to Decide Fate of Greyhound Racing*, CLICK ORLANDO (Apr. 17, 2018, 5:36PM), <https://www.clickorlando.com/news/florida-voters-to-decide-greyhound-racing-fate> [<https://perma.cc/DCQ4-7HYE>] (accessed Apr. 11, 2019).

<sup>46</sup> *Id.*; *High Stakes: Greyhound Racing in the United States*, ASPCA, [https://www.aspc.org/sites/default/files/high\\_stakes.pdf](https://www.aspc.org/sites/default/files/high_stakes.pdf) [<https://perma.cc/J38P-STGR>] (accessed Apr. 11, 2019).

<sup>47</sup> *The Final Lap: Greyhound Deaths at Florida Racetracks in 2013*, GREY2K USA WORLDWIDE (2014), <https://www.grey2kusa.org/pdf/FLdeaths.pdf> [<https://perma.cc/5CUQ-EG4P>] (accessed Apr. 11, 2019).

<sup>48</sup> Ryan S. Parker & Ralph A. DeMeo, *The Proposed Constitutional Amendment to Ban Greyhound Racing in Florida: The Time is Now*, 92 FLA. BAR J. 62 (2018), <https://www.florida-bar.org/the-florida-bar-journal/the-proposed-constitutional-amendment-to-ban-greyhound-racing-in-florida-the-time-is-now/> [<https://perma.cc/P7YQ-JYMA>] (accessed Apr. 11, 2019).

<sup>49</sup> *See id.* (reporting that dogs tested positive for “pain medication called Oxymorphone” and “for cocaine and . . . metabolites of cocaine”); FLA. DEP’T BUS. & PROF’L REGULATION, *Division of Pari-Mutuel Wagering 86th Annual Report*, 29 (2017), <http://www.myfloridalicense.com/dbpr/pmw/-documents/AnnualReports/AnnualReport-2016-2017-86th-20180305.pdf> [<https://perma.cc/7UAB-SJ2N>] (accessed Apr. 11, 2019) (listing drugs for which racing greyhounds have tested positive in the most recent annual report); Kyle Swenson, *Dog Racing “Has a Drug Problem” as 12 Florida Greyhounds Test Positive for Cocaine*, WASH. POST (July 6, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/07/06/dog-racing-has-a-drug-problem-as-12-florida-greyhounds-test-positive-for-cocaine/?utm\\_term=.ccfb8633a97a](https://www.washingtonpost.com/news/morning-mix/wp/2017/07/06/dog-racing-has-a-drug-problem-as-12-florida-greyhounds-test-positive-for-cocaine/?utm_term=.ccfb8633a97a) [<https://perma.cc/K6EM-V4GJ>] (accessed Apr. 11, 2019) (detailing an individual dog who had tested positive for cocaine five times in four months).

in the U.S.<sup>50</sup> Critics and opponents of the amendment, such as South-eastern Greyhound Adoption, claim that the industry is not abusive in the way animal activists claim. The organization's president claims the dogs "spend the first part of their lives enjoying racing, and the rest in the loving arms of their adopted parents," and the sport raises awareness for the breed.<sup>51</sup> Opponents of the amendment have raised concerns that the amendment provides no provisions for the care and welfare of the retired dogs as they transition out of the racing circuit.<sup>52</sup> A spokesperson for Greyhound Pets of America, a group that opposed the amendment, accused animal activists of not knowing how to care for greyhounds during this transitional period.<sup>53</sup> The group Greyhound Crossroads criticizes the lack of provisions in the amendment regarding the transition. Joanne Johnson of Greyhound Crossroads complains of putting "people out of business, closing down breeders, closing down tracks," and argues that animal activists and other advocates of the bill are "the last people [a handler] would send [the] dogs to if [the dogs] were forced to retire . . . ."<sup>54</sup> As many as 7,000 dogs—an estimated 3,700 racing dogs and others who are puppies, in training, or used as brood mothers<sup>55</sup>—will be "unemployed" and looking for new homes.<sup>56</sup> Christine Dorchak of Grey2K has confidence that the organization can rely on a nationwide network of partners to find adoptive homes for the retired dogs.<sup>57</sup>

#### IV. TRAVELING CIRCUS ANIMALS

In December 2018, New Jersey Governor Phil Murphy signed "Nosey's Law," prohibiting traveling circuses from using wild animals in shows.<sup>58</sup> Named for a 36-year-old elephant who suffered abuse in a traveling circus, the law passed in a landslide in the New Jersey Assembly and unanimously in the State Senate.<sup>59</sup> Various states passed

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<sup>50</sup> Santich, *supra* note 35.

<sup>51</sup> Wile, *supra* note 39.

<sup>52</sup> Kim Kavin, *Florida Banned Greyhound Racing. What Happens to the Dogs Now?*, WASH. POST (Nov. 16, 2018), [https://www.washingtonpost.com/science/2018/11/16/florida-banned-greyhound-racing-now-what-happens-dogs/?noredirect=on&utm\\_term=.f42a089dd84f](https://www.washingtonpost.com/science/2018/11/16/florida-banned-greyhound-racing-now-what-happens-dogs/?noredirect=on&utm_term=.f42a089dd84f) [<https://perma.cc/E5M6-K2JY>] (accessed Apr. 11, 2019).

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

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

<sup>55</sup> Christine DeMattei, *Yes, Florida's Greyhound Racing Ban Means Thousands of Dogs Will Need New Homes. But Not Right Away.*, WLRN MIAMI (Nov. 27, 2018), <http://www.wlrn.org/post/yes-floridas-greyhound-racing-ban-means-thousands-dogs-will-need-new-homes-not-right-away> [<https://perma.cc/LRH9-GHCX>] (accessed Apr. 11, 2019).

<sup>56</sup> Raffa, *supra* note 40.

<sup>57</sup> Kavin, *supra* note 52.

<sup>58</sup> *Governor Murphy Signs "Nosey's Law," Outlawing the Use of Wild and Exotic Animals in Traveling Animal Acts*, OFFICE GOVERNOR (Dec. 14, 2018), <https://www.state.nj.us/governor/news/news/562018/approved/20181214b.shtml> [<https://perma.cc/TT2T-XV2F>] (accessed Apr. 11, 2019).

<sup>59</sup> *See id.* (noting Nosey's age and history of abuse); Zachary Toliver, *Update: New Jersey Governor Expected to Sign Nosey's Law*, PETA (Oct. 30, 2018), <https://www.peta>

legislation banning the use of elephants in traveling circus acts, including Illinois and New York, as recently as last year,<sup>60</sup> but New Jersey's legislation expands protections to any "wild or exotic animal," which the law defines as "any live animal that is classified into" one of twelve specified scientific classifications.<sup>61</sup> Nosey's Law first entered the New Jersey legislature in late 2016, and passed easily through the Assembly and Senate, but was 'pocket vetoed' by then-Governor Chris Christie in January 2018, during the final days of his term.<sup>62</sup> When Governor Phil Murphy was sworn in on January 16, he spoke about Christie's vetoing record and promised to sign more legislation than his predecessor.<sup>63</sup> Legislators took this as a second chance, and found success.<sup>64</sup> Governor Murphy, who has proven himself to be an animal welfare supporter on more than one occasion,<sup>65</sup> said that he was proud to sign Nosey's Law, adding that "these animals belong in their natural habitats or in wildlife sanctuaries," and that "New Jersey will not allow wild and exotic animals to be exploited and cruelly treated within [the] state."<sup>66</sup>

One week after Governor Murphy signed Nosey's Law, Hawaii Governor David Ige signed similar legislation, which bans the import of "dangerous" wild animals for exhibition.<sup>67</sup> This law includes circuses, but also applies to exhibitors using wild animals for carnivals, riding attractions, and photo opportunities.<sup>68</sup> This law is based in pub-

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.org/blog/winning-new-jersey-first-state-ban-wild-animal-acts/ [https://perma.cc/W4HP-4DSV] (accessed Apr. 11, 2019).

<sup>60</sup> See, e.g., 720 ILL. COMP. STAT. 5/48-11 (2019) (prohibiting mobile or traveling circus acts from using elephants in shows); see also N.Y. AGRIC. & MKTS. LAW § 380 (McKinney 2019) (prohibiting all circuses from using elephants in shows).

<sup>61</sup> S.B. 1093, 218th Leg., Reg. Sess. (N.J. 2018).

<sup>62</sup> Kirsten Peek, *Outgoing NJ Gov. Chris Christie Rejects Wild Animal Acts Bill*, HUMANE SOC'Y U.S. (Jan. 16, 2018), <https://www.humanesociety.org/news/outgoing-nj-gov-chris-christie-rejects-wild-animal-acts-bill> [https://perma.cc/Z8NS-DD88] (accessed Apr. 11, 2019).

<sup>63</sup> Brent Johnson, *Phil Murphy Sworn In, Replaces Christ Christie as N.J. Governor*, NJ.COM (Jan. 16, 2018), [https://www.nj.com/politics/index.ssf/2018/01/phil\\_murphy\\_sworn\\_in\\_as\\_njs\\_new\\_governor.html](https://www.nj.com/politics/index.ssf/2018/01/phil_murphy_sworn_in_as_njs_new_governor.html) [https://perma.cc/RKE4-522Y] (accessed Apr. 11, 2019).

<sup>64</sup> *Governor Murphy Signs "Nosey's Law"*, supra note 58.

<sup>65</sup> See Mikherji, *Benson Bill to Create "Humane State" License Plates Signed into Law*, INSIDER N.J. (Nov. 2, 2018), <https://www.insidernj.com/press-release/mukherji-benson-bill-create-humane-state-license-plates-signed-law/> [https://perma.cc/B8WQ-DLD4] (accessed Apr. 11, 2019) (discussing a bill that Governor Murphy signed into law authorizing the New Jersey Motor Vehicle Commission to create specialty "Humane State" license plates, with the proceeds going to the Animal Welfare Federation of New Jersey).

<sup>66</sup> *Governor Murphy Signs "Nosey's Law"*, supra note 58.

<sup>67</sup> Nina Wu, *Gov. Ige Signs Circus Animal Ban into Law*, HONOLULU STAR-ADVERTISER (Dec. 24, 2018), <https://www.staradvertiser.com/2018/12/24/breaking-news/gov-ige-signs-circus-animals-ban-into-law/> [https://perma.cc/22EC-YSHL] (accessed Apr. 11, 2019).

<sup>68</sup> Michelle Kretzer, *Hawaii Becomes the Second State to Shut Out Wild-Animal Circuses*, PETA (Dec. 22, 2018), <https://www.peta.org/blog/hawaii-bans-animal-circuses/> [https://perma.cc/PP2Z-XQKS] (accessed Apr. 11, 2019).



lic health concerns, not animal welfare concerns, and allows exceptions for government zoos as well as for film and television shoots.<sup>69</sup> Regardless, animal welfare activists call this a victory, with Michelle Kretzer of People for the Ethical Treatment of Animals (PETA) sending Governor Ige a “mahalo.”<sup>70</sup> In recent years, the cruel mistreatment of elephants has gained publicity, causing public concern to grow to the point where Ringling Brothers and Barnum & Bailey circus stopped using elephants in circus acts.<sup>71</sup> Animal welfare groups brought suit against the owner of Ringling Brothers under the citizen-suit provision of the Endangered Species Act,<sup>72</sup> claiming that using elephants in exhibition acts was a “take” as defined by the Act.<sup>73</sup> Approximately eighteen months before the New Jersey and Hawaii bills passed to cover other wild circus animals, HSUS revealed the results of an undercover investigation which focused on the treatment of tigers.<sup>74</sup> Like elephants, tigers are subjected to cruelty for the sake of entertainment. Tigers in Ryan Easley’s ShowMe Tigers act were whipped, hit, starved, and deprived of veterinary medicine and adequate shelter while in Easley’s ‘care.’<sup>75</sup> An undercover investigation ultimately found: “Ryan Easley utilizes archaic training methods which entail fear, force and punishment. In my professional opinion, the tigers at ShowMe Tigers are suffering from psychological neglect and trauma on a daily basis.”<sup>76</sup> Based on these findings, it seems that further legislation protecting tigers and other circus animals could not come soon enough.

## V. OUTDOOR DOG PROTECTIONS

The smallest state in the nation took one of the biggest steps toward companion animal protections in 2018. In the cold December of 2017, Rhode Island SPCA (RISPCA) President Dr. Finnochio received fifty-three calls reporting dogs left out in freezing temperatures in Warwick and Exeter.<sup>77</sup> Unfortunately, upon visiting the scene, the RISPCA found that, because the owner provided the dogs with water

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<sup>69</sup> Wu, *supra* note 67.

<sup>70</sup> Kretzer, *supra* note 68.

<sup>71</sup> Tessa Berenson, *Why the Circus is Saying Goodbye to Elephants*, TIME MAG. (Mar. 5, 2015), <http://time.com/3733447/elephants-animal-cruelty-abuse-circus/> [https://perma.cc/RB2J-YA35] (accessed Apr. 11, 2019).

<sup>72</sup> Endangered Species Act of 1973, 16 U.S.C. § 1540(g)(1)(A) (2019).

<sup>73</sup> See generally Mark Eichelman, *Ringling Brothers on Trial: Circus Elephants and the Endangered Species Act*, 16 ANIMAL L. 153 (2010) (discussing the suits brought against the circus companies).

<sup>74</sup> *Undercover Investigation by the Humane Society of the United States Reveals Abused Tigers Whipped and Hit at Circuses*, HUMANE SOC’Y U.S. (May 18, 2017), [https://www.humanesociety.org/news/undercover-investigation-humane-society-united-states-reveals-abused-tigers-whipped-and-hit?credit=blog\\_post\\_010318\\_id9490](https://www.humanesociety.org/news/undercover-investigation-humane-society-united-states-reveals-abused-tigers-whipped-and-hit?credit=blog_post_010318_id9490) [https://perma.cc/N2JR-GF7Y] (accessed Apr. 11, 2019).

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

<sup>76</sup> *Id.*

<sup>77</sup> Kim Kalunian, *RISPCA: Owner to Move Warwick Pit Bulls Inside After Complaints*, WPRI (Dec. 29, 2017), <https://www.wpri.com/news/local-news/rispca-owner-to>

and shelter, the owner was not breaking Rhode Island law.<sup>78</sup> Finnochio urged the public to call on Rhode Island legislators to strengthen the laws, and within six months, legislation was on the table to regulate when, and for how long, dogs can be outdoors in the cold.<sup>79</sup> The amendment to the existing dog-care law makes it illegal for an owner or keeper to “keep any dog outside, either tethered or otherwise confined, when the ambient temperature is beyond the industry standard for the weather safety scale as set forth in the most recent adopted version of the Tufts Animal Care and Condition Weather Safety Scale (TACC).”<sup>80</sup> TACC provides a formula to quantify abuse or neglect, which are often difficult to define.<sup>81</sup> TACC illustrates and assigns point values to emaciated dogs, and to the conditions observed by a person evaluating the dog’s surroundings.<sup>82</sup> Conditions taken into consideration include: the dog’s size and weight, the dog’s age, whether the dog is brachycephalic, whether water is available, and the temperature and precipitation.<sup>83</sup> Environmental considerations, such as sanitation of the shelter (or lack thereof), and physical considerations, such as hair matting and nail growth, are considered as well.<sup>84</sup> After the points per category are added and the category with the highest score is determined, TACC provides an answer key ranking the neglect from one to five—one indicating no evidence of neglect, and five indicating severe abuse and neglect.<sup>85</sup>

The Rhode Island law prohibits keeping a dog outside “beyond the industry standard for the weather safety scale,”<sup>86</sup> though TACC does not specify what “standard” means on its scale.<sup>87</sup> Additionally, the law does not define “ambient temperature,” likely leaving it to law enforcement or animal control officer to determine the average temperature for the time of year.<sup>88</sup> The law does specify the time of day that dogs

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move-warwick-pit-bulls-inside-after-complaints\_20180327075531378/1082472909 [https://perma.cc/XWW7-TRTQ] (accessed Apr. 11, 2019).

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

<sup>79</sup> *Id.*; Sarah Doiron & Shiina Losciuto, *Bill Protecting Dogs from Being Kept in Frigid Temperatures Passes Welfare Committee*, WPRI (Mar. 27, 2018), <https://www.wpri.com/news/local-news/providence/bill-protecting-dogs-from-being-kept-in-frigid-temperatures-passes-welfare-committee/1084315429> [https://perma.cc/KQ7V-RR7X] (accessed Apr. 11, 2019).

<sup>80</sup> 4 R.I. Gen. Laws Ann. § 4-13-42(5) (West 2018).

<sup>81</sup> *Tufts Animal Care and Condition (TACC) Scales for Assessing Weather and Environmental Safety, and Physical Care in Dogs*, TUFTS CTR. ANIMALS & PUB. POL’Y, [https://s3.amazonaws.com/sharedlibrary/ckeditor\\_assets/attachments/12/tufts-animal-care-and-condition-chart.pdf](https://s3.amazonaws.com/sharedlibrary/ckeditor_assets/attachments/12/tufts-animal-care-and-condition-chart.pdf) [https://perma.cc/TC9M-62G7] (accessed Apr. 11, 2019).

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

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

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

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

<sup>86</sup> 4 R.I. Gen. Laws Ann. § 4-13-42(5).

<sup>87</sup> See generally *Tufts Animal Care and Condition*, *supra* note 81 (ranking the neglect of an animal from one to five without providing which of these rankings would constitute “standard”).

<sup>88</sup> 4 R.I. Gen. Laws Ann. § 4-13-42(4).

may be tethered or confined outside. A dog cannot be tethered outside between 10 p.m. and 6 a.m. for any period of time longer than fifteen minutes.<sup>89</sup> Rhode Island may be influencing other states, including Delaware, Indiana, and Virginia, which are all proposing similar legislation and aiming to close loopholes in existing laws.<sup>90</sup> Acting President of HSUS Kitty Block is hopeful that 2019 will bring even more legislative victories for animals.<sup>91</sup>

## VI. FARM ANIMAL CONFINEMENT

California passed another piece of legislation that contributed to its position as top in the nation for animal welfare.<sup>92</sup> Sixty-three percent of California voters supported Proposition 12,<sup>93</sup> known as the Prevention of Cruelty to Farm Animals Act, which will regulate minimum cage size requirements for farmed animals, namely hens, cows, and pigs.<sup>94</sup> The new law prohibits farmers from causing “any covered animals to be confined in a cruel manner.”<sup>95</sup> To define what qualifies as an animal being confined in a cruel manner, the law prohibits any confining structure that “prevents the animal from lying down, standing up, fully extending the animal’s limbs, or turning around freely.”<sup>96</sup> By the start of 2020, veal calves will receive a minimum of forty-three square feet of space per calf,<sup>97</sup> and egg-laying hens will receive a minimum of one square foot per hen.<sup>98</sup> By the start of 2022, breeding pigs will receive a minimum of twenty-four square feet per pig,<sup>99</sup> and all egg-laying hens will be kept in cage-free housing systems.<sup>100</sup>

Furthermore, the law prevents business owners from selling eggs, veal, or pork “that the business owner or operator knows or should know is the [product] of a covered animal who was confined in a cruel manner.”<sup>101</sup> To discourage industrial farmers from moving their businesses out of California to circumvent the regulations, Proposition 12 requires that these specified animal products produced out of state

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<sup>89</sup> *Id.* § 4-13-42(5).

<sup>90</sup> Kitty Block, *States Act to Protect Animals Left Outside in Cold Weather*, HUMANE SOC’Y U.S.: A HUMANE WORLD (Jan. 9, 2019), [https://blog.humanesociety.org/2019/01/states-act-to-protect-animals-left-outside-in-cold-weather.html?credit=blog\\_post\\_010318\\_id9490](https://blog.humanesociety.org/2019/01/states-act-to-protect-animals-left-outside-in-cold-weather.html?credit=blog_post_010318_id9490) [<https://perma.cc/WYV9-UVZK>] (accessed Apr. 11, 2019).

<sup>91</sup> *See id.* (speaking enthusiastically about the many localities and states implementing legislation this year to protect dogs in cold weather).

<sup>92</sup> *Humane State Rankings 2018*, *supra* note 4.

<sup>93</sup> *Statement of Vote*, CAL. SEC. ST. (Nov. 6, 2018), <https://elections.cdn.sos.ca.gov/sov/2018-general/sov/2018-complete-sov.pdf> [<https://perma.cc/6TFB-XXKD>] (accessed Apr. 11, 2019).

<sup>94</sup> CAL. HEALTH & SAFETY CODE § 25991 (2018).

<sup>95</sup> *Id.* § 25990.

<sup>96</sup> *Id.* § 25991.

<sup>97</sup> *Id.* § 25991(e)(2).

<sup>98</sup> *Id.* § 25991(e)(4).

<sup>99</sup> *Id.* § 25991(e)(3).

<sup>100</sup> *Id.* § 25991(e)(5).

<sup>101</sup> *Id.* § 25990.

must comply with the regulations.<sup>102</sup> The law adds language and specificity to build upon progress made with the 2008 Proposition 2, which passed with 64% of the vote.<sup>103</sup> Proposition 2 took effect in 2015, and required that confined egg-laying hens, veal calves, and pigs be provided with spaces large enough for each animal to “stand up, lie down, turn around and extend [its] limbs.”<sup>104</sup> The proposition was repeatedly challenged in court for being unconstitutionally vague, implying that an egg farmer may not be able to tell if the farm’s cage scheme met the size requirements, but these arguments failed, as one court determined “a person of reasonable intelligence can determine the dimensions of an appropriate confinement that will comply with Proposition 2.”<sup>105</sup> In a similar challenge, another court found the language in Proposition 2 to be sufficiently clear: “Proposition 2 establishes a clear test that any law enforcement officer can apply, and that test does not require the law enforcement officer to have the investigative acumen of Columbo to determine if an egg farmer is in violation of the statute.”<sup>106</sup> With the passage of Proposition 12 last year, the requirements for lawful farm animal confinement are made explicitly clear, leaving farmers with no questions about their compliance.

Surprisingly, PETA opposed Proposition 12.<sup>107</sup> An official statement warned voters against being “fooled” by the “rosy terms” of the proposition.<sup>108</sup> The organization praised incremental steps over sweeping legislation, yet also condemned the proposition for being a “millimeter” when it should have been a “mile.”<sup>109</sup> PETA ultimately decided that the proposition did not reduce suffering for egg-laying hens, and in fact “maintained their misery,” and that “instead of institutionalizing such severe cruelty, we need to oppose it.”<sup>110</sup> In its statement, PETA also argued that waiting until 2022 to formally outlaw hen cages was “a step backward,” as many large American retailers already carry cage-free eggs by choice, an advancement for which it claims credit.<sup>111</sup> The Association of California Egg Farmers and the National Pork Producers Council (NPPC) joined PETA in opposing

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<sup>102</sup> Kelsey Piper, *California and Florida Both Pass Animal Welfare Laws by a Landslide*, VOX: FUTURE PERFECT (Nov. 7, 2018, 2:38 PM), <https://www.vox.com/future-perfect/2018/11/7/18071246/midterms-amendment-13-proposition-12-california-florida-animal-welfare> [<https://perma.cc/CN7W-E5JX>] (accessed Apr. 11, 2019).

<sup>103</sup> *Prop 2 Timeline*, HUMANE SOC’Y U.S., <http://cagefreeca.com/about-the-issue/prop-2-timeline/> [<https://perma.cc/LLN2-3N8J>] (accessed Apr. 11, 2019).

<sup>104</sup> *Id.*

<sup>105</sup> *Cramer v. Harris*, 591 F. App’x. 634, 635 (9th Cir. 2015).

<sup>106</sup> *Cramer v. Brown*, 2012 U.S. Dist. LEXIS 200053, at \*12 (9th Cir. Sept. 12, 2012).

<sup>107</sup> *Why We Oppose California’s Farmed Animal Initiative and You Should, Too*, PETA (Nov. 21, 2017), <https://www.peta.org/blog/why-we-oppose-californias-farmed-animal-initiative-and-you-should-too/> [<https://perma.cc/BF5S-8AHL>] (accessed Apr. 11, 2019).

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

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

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

Proposition 12.<sup>112</sup> NPPC Spokesman Jim Monroe argued that “farmers—not animal rights activists—should be allowed to determine which production practices are best for their livestock.”<sup>113</sup> NPPC also believed that Proposition 12 places substantial economic pressure on pig farmers both in California, which leads the national market in pork products, and elsewhere in the country.<sup>114</sup> The law’s proponents also consider California’s status as an economic powerhouse. For example, Josh Balk, Spokesman for HSUS, predicts that “the world’s fifth-largest economy banning the sale of meat and eggs from caged animals is going to have a tremendous impact.”<sup>115</sup> Sara Amundson, also with HSUS, praised California for “rais[ing] the bar at an important time in [the] consideration of what farm to table means in this country.”<sup>116</sup>

## VII. FOOD ASSISTANCE PROGRAM REQUIREMENTS

Iowa also regulated the sale of eggs in 2018. Iowa legislators passed, and Governor Kim Reynolds then signed, a bill that requires grocery stores accepting federal food assistance programs to sell “conventional eggs,” meaning eggs that are not claimed to be “cage-free” or “free-range.”<sup>117</sup> The Act covers both local retailers and national chains such as Walmart, which has vowed to begin selling only cage-free eggs by 2025.<sup>118</sup> Under this state law, a store that participates in Special Supplemental Food Program for Women, Infants, and Children (WIC), a federal law,<sup>119</sup> must choose to either compromise on cage-free egg promises or withdraw from WIC.<sup>120</sup> Iowa Representative Jarad Klein, the bill’s House Floor Manager, wants to ensure that a low-cost protein option is available to Iowans on the WIC program, because conventional eggs are often much less costly than cage-free or free-range eggs.<sup>121</sup> Curiously, participants in Iowa’s current WIC program are al-

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<sup>112</sup> Piper, *supra* note 102.

<sup>113</sup> Evan Wyloge, *California Proposition Results: Residents Vote to Free Farm Chickens from Cages, But Will it Raise Egg Prices?*, PALM SPRINGS DESERT SUN (Nov. 6, 2018, 11:52 PM), <https://www.desertsun.com/story/news/politics/elections/2018/11/06/california-approves-prop-12-free-farm-chickens-cages/1917155002/> [<https://perma.cc/RQH4-TGX6>] (accessed Apr. 11, 2019).

<sup>114</sup> *Id.*

<sup>115</sup> Piper, *supra* note 102.

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

<sup>117</sup> H.R. 2408, 87th Gen. Assemb., Reg. Sess. (Iowa 2018).

<sup>118</sup> Roz Brown, *Iowa Legislation Raises Egg-spectations for Conventional Growers*, PUB. NEWS SERV. (Mar. 19, 2018), <https://www.publicnewsservice.org/2018-03-19/consumer-issues/iowa-legislation-raises-egg-spectations-for-conventional-growers/a61848-1> [<https://perma.cc/YT9H-CXPU>] (accessed Apr. 11, 2019).

<sup>119</sup> 42 U.S.C. § 1786 (2019).

<sup>120</sup> Brown, *supra* note 118.

<sup>121</sup> William Petroski, *Bill Requiring Competition for Cage-Free Eggs Passes Iowa’s House*, DES MOINES REG. (Feb. 26, 2018), <https://www.desmoinesregister.com/story/news/politics/2018/02/26/bill-requiring-competition-cage-free-eggs-passes-iowa-house/375731002/> [<https://perma.cc/YK4M-C3ZQ>] (accessed Apr. 11, 2019).

ready restricted to buying only conventional eggs.<sup>122</sup> Conventional eggs are generally understood to be eggs from hens raised in factory farms and confined to battery cages.<sup>123</sup> Standard battery cages are designed to hold five to ten egg-laying hens, restricting each hen to the same amount of space as a sheet of letter paper.<sup>124</sup> On a human scale, this would be the rough equivalent of “spending [one’s] entire life in a wire cage the size of [a] bathtub with four other people.”<sup>125</sup> The hen’s inability to move damages both her physical and psychological health.<sup>126</sup> A battery cage forces a hen to stay immobile until her bones weaken and muscles atrophy, and the sharp wire cuts her feathers and skin.<sup>127</sup> The tight confinement inhibits her natural behavioral urges, such as perching, nesting, and dust-bathing.<sup>128</sup> Leading welfare scientists and experts agree that battery cages are inhumane in nature.<sup>129</sup> Dr. Konrad Lorenz highlights “the inability to retire somewhere for the laying act” as the worst torture a battery hen endures.<sup>130</sup> “For the person who knows something about animals it is truly heart-rending to watch how a chicken tries again and again to crawl beneath her fellow-cage mates to search there in vain for cover.”<sup>131</sup> Seven American states—Massachusetts, Ohio, California, Michigan, Washington, Oregon and, as of 2018, Rhode Island—have banned the use of battery cages in egg production.<sup>132</sup>

<sup>122</sup> *Iowa Bill a New Tactic in Debate Over Cage-Free Eggs*, GAZETTE (Mar. 11, 2018), <https://www.thegazette.com/subject/news/government/iowa-bill-a-new-tactic-in-debate-over-cage-free-eggs-20180311> [<https://perma.cc/U4CC-NQP4>] (accessed Apr. 11, 2019).

<sup>123</sup> See, e.g., *Organic vs. Conventional: Find Out Which Eggs Are Healthiest to Eat*, ECOWATCH (Nov. 14, 2014), <https://www.ecowatch.com/organic-vs-conventional-find-out-which-eggs-are-healthiest-to-eat-1881971654.html> [<https://perma.cc/H2B8-6CDK>] (accessed Apr. 11, 2019) (“These are your standard supermarket eggs. The chickens are usually raised in an overfilled hen house or a cage and never see the light of day.”).

<sup>124</sup> *Iowa Senate Passes Bill to Force Grocers to Sell Factory-Farmed Eggs*, NAT’L HUMANE EDUC. SOC’Y (Mar. 23, 2018), <https://nhes.org/iowa-senate-passes-bill-force-grocers-sell-factory-farmed-eggs/> [<https://perma.cc/L7RA-E398>] (accessed Apr. 11, 2019).

<sup>125</sup> Bruce Friedrich, *The Cruellest of All Factory Farm Products: Eggs from Caged Hens*, HUFFINGTON POST (Jan. 14, 2013, 10:13 AM), [https://www.huffingtonpost.com/bruce-friedrich/eggs-from-caged-hens\\_b\\_2458525.html](https://www.huffingtonpost.com/bruce-friedrich/eggs-from-caged-hens_b_2458525.html) [<https://perma.cc/452R-3A5E>] (accessed Apr. 11, 2019) (“You wouldn’t be able to move, so your muscles and bones would deteriorate. Your feet would become lacerated. You would go insane. That’s precisely what happens to laying hens.”).

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

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

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

<sup>129</sup> *Scientists and Experts on Battery Cages and Laying Hen Welfare*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/sites/default/files/docs/hsus-expert-synopsis-battery-cages-hen-welfare.pdf> [<https://perma.cc/XKS5-NTMF>] (accessed Apr. 11, 2019).

<sup>130</sup> See *id.* (quoting Konrad Lorenz, *Animals are Sentient Beings: Konrad Lorenz on Instinct and Modern Factory Farming*, DER SPIEGEL (Nov. 17, 1980) at 264).

<sup>131</sup> *Id.*

<sup>132</sup> Kitty Block, *Victory! Rhode Island Bans Battery Cages for Egg-Laying Hens*, HUMANE SOC’Y U.S.: A HUMANE WORLD (July 13, 2018), <https://blog.humanesociety.org/2018/07/victory-rhode-island-bans-battery-cages-for-egg-laying-hens.html> [<https://perma.cc/TD47-RMV8>] (accessed Apr. 11, 2019).

Attorney Cody Carlson at Mercy for Animals describes the Iowa law as “bizarre.”<sup>133</sup> “The idea of forcing private businesses to sell a specific product is pretty unprecedented,” Carlson says.<sup>134</sup> He notes that the factory-farm lobby opposes animal-protection laws by arguing for a free market, and letting retailers and consumers decide what products should be carried and bought. He points out what he believes to be hypocrisy: “And now that the market is deciding, they no longer want the market to decide. The market is not deciding in their favor and so they don’t like it anymore.”<sup>135</sup> Iowa Democrats echo this sentiment, including State Representative Sharon Steckman.<sup>136</sup> However, Kevin Stiles, Executive Director of the Iowa Egg Council, rejects the idea that dictating a grocery store’s stock “goes against the spirit of the free market.”<sup>137</sup> Instead he says, “This bill is in response to pressure put on grocers by outside groups trying to push their own agendas to only offer cage-free eggs. Most grocery stores want to offer consumer choice.”<sup>138</sup>

### VIII. ANIMAL WELFARE ADVANCEMENT

In August 2018, Massachusetts Governor Charlie Baker signed supplementary legislation to the Protect Animal Welfare and Safety (PAWS) Act of 2014.<sup>139</sup> This supplement, called PAWS II, made adjustments to several provisions within the Commonwealth’s existing animal cruelty laws, including areas of dogfighting, sexual animal abuse, mandatory reporting, and abandonment.<sup>140</sup> The original PAWS Act passed after a particularly gruesome animal abuse case in Quincy, Massachusetts.<sup>141</sup> “Puppy Doe,” a young pit bull, suffered “by far the worst” cruelty that Animal Rescue League of Boston Vice President Martha Smith-Blackmore had ever seen.<sup>142</sup> Puppy Doe was drastically underweight, appeared to have been starved and beaten frequently, had a sliced tongue, a burnt nose, and stabbed eyes when she was

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<sup>133</sup> *Iowa Bill a New Tactic in Debate Over Cage-Free Eggs*, *supra* note 122.

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

<sup>135</sup> Brown, *supra* note 118.

<sup>136</sup> Petroski, *supra* note 121.

<sup>137</sup> Charlotte Simmonds, *Iowa Stores May be Forced to Sell Eggs from Battery Hens*, *GUARDIAN* (Mar. 7, 2018), <https://www.theguardian.com/environment/2018/mar/07/iowa-stores-may-be-forced-to-sell-eggs-from-battery-hens> [<https://perma.cc/RFZ3-JBPV>] (accessed Apr. 11, 2019).

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

<sup>139</sup> Dina Zawaski, *PAWS II Is Signed by Governor Baker!*, *MSPCA-ANGELL* (Sept. 10, 2018), <https://www.mspca.org/advocate-for-animals/paws-ii-is-signed-by-governor-baker/> [<https://perma.cc/B62Z-QRFT>] (accessed Apr. 11, 2019).

<sup>140</sup> S. 2646, 190th Gen. Court (Mass. 2018).

<sup>141</sup> Nik DeCosta-Klipa, *Everything You Need to Know About the Upcoming ‘Puppy Doe’ Trial*, *BOSTON.COM* (Aug. 7, 2017), <https://www.boston.com/news/local-news/2017/08/07/everything-you-need-to-know-about-the-upcoming-puppy-doe-trial> [<https://perma.cc/PHR3-7PT9>] (accessed Apr. 11, 2019).

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

abandoned at a children's playground in August 2013.<sup>143</sup> Her injuries were so horrific and severe that veterinarians had no choice but to euthanize Puppy Doe, because, unfortunately, "she could not be saved."<sup>144</sup> The first PAWS Act was signed by then-Governor Deval Patrick within one year.<sup>145</sup> In the years since Puppy Doe's death, her owner was tried and convicted on twelve counts of animal cruelty. He will serve at least eight years in prison; complete a probation period; and never again "own, care for or come in contact with any animal."<sup>146</sup> Within months of sentencing, PAWS II became law.<sup>147</sup> The provisions in PAWS II come as recommendations of the Animal Cruelty and Protection Task Force (Task Force) established by PAWS I.<sup>148</sup> These recommendations reflect a wide array of key areas the Task Force identified as needing strengthening.<sup>149</sup> Landlords in Massachusetts are now required to search the property within three days of a tenant's departure for abandoned animals.<sup>150</sup> Drowning is no longer a lawful method of euthanizing a pet or wild animal.<sup>151</sup> A provision prohibiting insurance companies from discriminating based on a dog's breed was ultimately struck from the final version,<sup>152</sup> but the Act requires insurers to ask specific questions beyond simply the dog's breed when evaluating any dog-related claims.<sup>153</sup> One provision is designed to benefit people: Section 2 adds animal control officers to the list of professionals who are mandated to report suspicions of abuse of the elderly, children, or those with disabilities.<sup>154</sup> PAWS II eliminates an old law requiring euthanization for animals rescued from fighting.<sup>155</sup> Now, a rescued fighting animal must be evaluated and assessed by a rescue organization and either adopted or transferred to a different organization.<sup>156</sup> In what is perhaps the most transformative provision of the

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

<sup>144</sup> *Id.*

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

<sup>146</sup> *Man in "Puppy Doe" Case Gets 8 to 10 Years in Prison for Torturing His Dog*, CBS NEWS (Mar. 27, 2018, 4:30 PM), <https://www.cbsnews.com/news/radoslaw-czerkawski-puppy-doe-man-sentenced-prison-abusing-dog-dedham-massachusetts/> [<https://perma.cc/4CS3-878T>] (accessed Apr. 11, 2019).

<sup>147</sup> JR Reitz, *Governor Signs Montigny's Animal Cruelty Bill*, 1420 WBSM (Aug. 9, 2018), <http://wbsm.com/governor-signs-montignys-animal-cruelty-bill/> [<https://perma.cc/UV9J-67F4>] (accessed Apr. 11, 2019).

<sup>148</sup> *Governor Baker Signs Animal Cruelty Legislation*, MASS.GOV. (Sept. 27, 2018), <https://www.mass.gov/news/governor-baker-signs-animal-cruelty-legislation> [<https://perma.cc/59QT-JTYE>] (accessed Apr. 11, 2019).

<sup>149</sup> 2018—PAWS II, *Animal Cruelty*, MASS. SOC'Y FOR PREVENTION OF CRUELTY ANIMALS, [https://www.mspca.org/animal\\_protection/pawsii/](https://www.mspca.org/animal_protection/pawsii/) [<https://perma.cc/X287-UPH9>] (accessed Apr. 11, 2019).

<sup>150</sup> S. 2646(17).

<sup>151</sup> S. 2646(25).

<sup>152</sup> 2018—PAWS II, *Animal Cruelty*, *supra* note 149.

<sup>153</sup> S. 2646(32).

<sup>154</sup> S. 2646(2).

<sup>155</sup> S. 2646(28).

<sup>156</sup> *Id.*



PAWS II Act, Section 23 supplements Massachusetts law on animal sexual abuse.<sup>157</sup> This section clarifies definitions of “animal” and “sexual conduct,” and adds “trafficking animals for sex, facilitating or promoting sexual contact with an animal, and forcing a child to engage in sexual contact with an animal” to the list of expressly prohibited offenses.<sup>158</sup>

Massachusetts legislators were proud of the multitude of steps taken towards animal welfare with the bill. “There is zero tolerance in the Commonwealth for any cruelty toward innocent animals,” says Conference Committee Chairman Mark Montigny.<sup>159</sup> “This is one of the most important steps Massachusetts has taken in years to systematically protect pets and wild animals against abuse, cruelty, and mistreatment,” says Karen E. Spilka, President of the Massachusetts State Senate.<sup>160</sup> At the ceremonial signing, Governor Baker summarized the goal of the dozens of provisions in PAWS II: “The comprehensive PAWS II bill will further the protection and welfare of animals across the Commonwealth.”<sup>161</sup>

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<sup>157</sup> S. 2646(23).

<sup>158</sup> Zawaski, *supra* note 139.

<sup>159</sup> *Governor Baker Signs Animal Cruelty Legislation*, *supra* note 148.

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

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