

## 2019 STATE LEGISLATIVE REVIEW

By  
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*This Review examines the significant changes and additions to different states' laws throughout 2019. Among those significantly affected by these changes are farm animals, wildlife, and companion animals. 'Ag-Gag' and 'Right to Farm' bills began to flourish, but opponents have seen success in challenging their constitutionality. Wild animals found protection in fur and trapping bans, in addition to bans on killing contests. Companion animals continue to gain legal and physical protection through strengthened cruelty laws. These are a few of the many bills, regulations, and laws that impacted animals in 2019. Although some protections and regulations have seen cuts and restrictions, 2019 was a year of growth and development in all areas of the law concerning animals.*

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## I. INTRODUCTION

It is inspiring to consider all of the developments in state animal law in 2019. Congressman Earl Blumenauer of Oregon, who champions animal welfare as co-chair of the bipartisan Congressional Animal Protection Caucus, said, "I think you're going to witness remarkable progress this decade, driven in part by activation at the state level."<sup>1</sup> Given the incredible amount of material there is to cover on animal-related legislation in 2019, it seems likely that this will hold. Regrettably, the overwhelming amount of exciting developments taking place

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<sup>1</sup> Natasha Daly, *States Across US are Taking Bold Steps Towards Protecting Animals*, NAT'L GEOGRAPHIC (July 10, 2019), <https://www.nationalgeographic.com/animals/2019/07/first-time-animal-welfare-laws-in-us-states/?fbclid=IWAR1hJmp6igx6JdCIEvo9Qml6Hss7cwXKEOMHG6xR-agrJ4Stcp3mGZlDdA4#close> [https://perma.cc/M2UR-2ZGC] (accessed Apr. 19, 2020).

throughout the United States over the past year makes it difficult for this Legislative Review to cover all developments. However, this Review hopes to provide a bevy of exciting and thought-provoking information, while the authors eagerly look forward in anticipation of new and future progress in animal rights, protection laws, and advocacy. In preparation for those challenges ahead, this Review takes a moment to reflect on some inspiring accomplishments in 2019 in advocacy on behalf of non-human animals at the state law level.

## II. OUT ON THE FARM

### A. *Undercover Reporting and Investigative Journalism: Ag-Gag Legislation in 2019*

Anti-whistleblower legislation within the agricultural industry, often referred to as ‘Ag-Gag’ laws,<sup>2</sup> resurfaced in Iowa in 2019.<sup>3</sup> Ag-Gag statutes criminalize filming, photography, and other activities related to the gathering and dissemination of information about factory farming practices without the consent of owners or management.<sup>4</sup> Whistleblowers and undercover investigators undertake these activities to document animal welfare and abuse concerns in agricultural or farming facilities. Supporters of these laws often express concern over industry privacy, biosecurity, the negative repercussions of whistleblowers on the industry, and seek government protection from the impact these activities can have on the marketability and profitability of animal food products.<sup>5</sup> Supporters also express their own ‘concerns’ for the health and safety of the investigators, workers, and animals involved.<sup>6</sup>

On the other hand, opponents assert that Ag-Gag laws obfuscate, censor, and chill the factual and material information about animals in food production that should be available to the public regarding consumer goods and infringe fundamental constitutional rights and freedom.<sup>7</sup> For a free and open market to function properly, opponents of

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<sup>2</sup> See, e.g., *What Is Ag-Gag Legislation?*, AM. SOC’Y PREVENTION CRUELTY ANIMALS (ASPCA), <https://www.aspc.org/animal-protection/public-policy/what-ag-gag-legislation> [https://perma.cc/29X9-RVEG] (accessed Apr. 19, 2020) (describing Ag-Gag legislation).

<sup>3</sup> S. FILE 519, 88th Gen. Assemb., Reg. Sess. (Iowa, 2019).

<sup>4</sup> BRUCE A. WAGMAN ET AL., *ANIMAL LAW CASES & MATERIALS* 619–20 (6th ed.2019).

<sup>5</sup> See, e.g., Amanda Radke, *Do You Support Ag Gag Laws?*, BEEF MAG. (Mar. 14, 2012), <https://www.beefmagazine.com/blog/do-you-support-ag-gag-laws> [https://perma.cc/AE2J-6RJY] (accessed Apr. 19, 2020) (stating whistleblower videos “wreak havoc on the agriculture industry, which usually results in litigation, loss of jobs and a direct shot at the markets”).

<sup>6</sup> See, e.g., Matt McGrath, *US Animal Activist Laws ‘May Impact Globally’*, BBC NEWS (Apr. 12, 2013), <https://www.bbc.com/news/science-environment-22098224> [https://perma.cc/5QQ6-L6AV] (accessed Apr. 19, 2020) (insinuating that Ag-Gag laws only requiring footage to be turned over are pushed by the industry as a way to feign a shared goal of the reporting of cruelty).

<sup>7</sup> See, e.g., *Efforts to Restrict Recordings of Animal Abuse Could Impede News-gathering*, REP. COMMITTEE FOR FREEDOM PRESS, <https://www.rcfp.org/journals/news->

Ag-Gag legislation contend, consumers need the liberty of reasonable access to accurate and complete information to make informed choices and decisions.<sup>8</sup>

Iowa lawmakers' dedication to and reintroduction of Ag-Gag legislation in 2019 has been particularly embarrassing, detrimental, and costly to the state.<sup>9</sup> In January 2019, a U.S. District Court judge struck down the state's 2012 Ag-Gag law, which made it unlawful to misrepresent an individual's intentions when accessing an agricultural facility<sup>10</sup> and functionally barred undercover investigation or reporting by an employee,<sup>11</sup> as an unconstitutional violation of Iowans' First Amendment rights.<sup>12</sup> The American Civil Liberties Union (ACLU), founded "to defend and preserve the individual rights and liberties,"<sup>13</sup> argued that undercover reporting, investigative journalism, and freedom of the press, which the 2012 Ag-Gag law inhibited, are vital tools to inform the public about alleged corporate wrongdoing.<sup>14</sup> Despite the 2012 Ag-Gag law's unconstitutionality and the heavy financial burden involved in litigation, the governor of Iowa signed Senate File 519 on March 14, 2019, which very similarly criminalizes the use of deception:

[O]n a matter that would reasonably result in a denial of access to an agricultural production facility that is not open to the public and, through such deception, gains access . . . with the intent to cause physical or economic harm or other injury to the agricultural production facility's [interests.]<sup>15</sup>

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media-and-law-spring-2012/efforts-restrict-recordings/ [https://perma.cc/E4TR-3ZZY] (accessed Apr. 19, 2020) ("[Ag-Gag laws] may potentially restrict reporters' ability to gather and publish important information about the food industry.").

<sup>8</sup> See, e.g., Adam Ozimek, *Ag Gag Laws Are Bad For Markets*, FORBES (Mar. 26, 2014, 7:53 PM), <https://www.forbes.com/sites/modeledbehavior/2014/03/26/ag-gag-laws-are-bad-for-markets/#5d151a0069f4> [https://perma.cc/XC52-YMSF] (accessed Apr. 19, 2020) ("[A]g gag' laws which are designed to prevent people from filming animal treatment in agriculture are bad for markets: information on how animals are treated is exactly what consumers need in order for the market to perform its function.").

<sup>9</sup> See David Pitt, *Blocked by Court Defeat, Iowa Lawmakers Push New Ag-Gag Bill*, ASSOCIATED PRESS (Mar. 10, 2019), <https://apnews.com/25a4f5bc49624a34b9810e541a1ae1f5> [https://perma.cc/37UH-H3W9] (accessed Apr. 19, 2020) (describing how legal bills have already "cost taxpayers more than \$200,000 and continue to mount as the state appeals the case to the 8th U.S. Circuit Court of Appeals").

<sup>10</sup> IOWA CODE ANN. § 717A.3A (West 2019).

<sup>11</sup> Rox Laird, *Federal Judge Strikes Down Iowa 'Ag-Gag' Law*, COURTHOUSE NEWS SERV. (Jan. 9, 2019), <https://www.courthousenews.com/federal-judge-strikes-down-iowa-ag-gag-law/> [https://perma.cc/66RM-SYGN] (accessed Apr. 19, 2020).

<sup>12</sup> *Id.*; Animal Legal Def. Fund v. Reynolds, 353 F.Supp.3d 821, 827 (S.D. Iowa 2019).

<sup>13</sup> FAQs, ACLU, [https://www.aclu.org/faqs#1\\_1](https://www.aclu.org/faqs#1_1) [https://perma.cc/G9EE-LASX] (accessed Apr. 19, 2020).

<sup>14</sup> Esha Bhandari, *Court Rules 'Ag-Gag' Law Criminalizing Undercover Reporting Violates the First Amendment*, ACLU (Jan. 22, 2019, 2:00 PM), <https://www.aclu.org/blog/free-speech/freedom-press/court-rules-ag-gag-law-criminalizing-undercover-reporting-violates> [https://perma.cc/33D7-QB8E] (accessed Apr. 19, 2020).

<sup>15</sup> S. FILE 519, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

The language of the new Ag-Gag law, while slightly more specific and removing the problematic wording, such as “without consent of the owner,”<sup>16</sup> does not appear to address the unconstitutionality of the 2012 Ag-Gag law. Since Senate File 519, like the 2012 Ag-Gag law, appears to be a content-based regulation, it must be narrowly tailored and serve a compelling state interest to be constitutionally valid.<sup>17</sup> Among other possible areas for concern with the 2019 Ag-Gag law, the government’s protection of private industry from investigative journalism involving legitimate animal welfare and consumer protection concerns, as evidenced by litigation around the prior Iowa law, does not appear to be a compelling state interest.<sup>18</sup>

In April 2019, the Animal Legal Defense Fund (ALDF), a legal advocacy organization that promotes the interests of animals through the legal system,<sup>19</sup> filed a lawsuit, as a part of the same coalition that successfully challenged the first Iowa Ag-Gag law.<sup>20</sup> The suit aims to challenge the constitutionality of the second and very similar Iowa Ag-Gag law.<sup>21</sup>

### B. Right to Farm Laws

Right to farm (RTF) laws provide protection from nuisance lawsuits related to animal agriculture.<sup>22</sup> Common industrialized agricultural nuisances include unpleasant odors, noises, dangerous structures, and significant visual unpleasantness.<sup>23</sup> These nuisances

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<sup>16</sup> See Ellen Essman, *Can “Ag-Gag” Prevent Secretly Filming at Livestock Facilities?*, OHIO COUNTRY J. (Feb. 5, 2019), <https://www.ocj.com/2019/02/can-ag-gag-prevent-secretly-filming-at-livestock-facilities/> [<https://perma.cc/2Q3F-AXHB>] (accessed Apr. 19, 2020) (describing the provision struck down in court); see also Paul Brennan, *Iowa Legislature Passes New ‘Ag Gag’ Law*, LITTLE VILLAGE MAG. (Mar. 13, 2019), <https://littlevillagemag.com/iowa-legislature-passes-new-ag-gag-law/> [<https://perma.cc/Z33Z-UCLK>] (accessed Apr. 19, 2020) (discussing the U.S. District judge’s objection to the specific wording of the previous legislation such as “shall not, without the consent of the owner”).

<sup>17</sup> See *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the [state] proves that they are narrowly tailored to serve compelling state interests.”).

<sup>18</sup> *Iowa Ag-Gag Law 2.0 is Unconstitutional*, ANIMAL LEGAL DEF. FUND (Mar. 14, 2019), <https://aldf.org/article/iowa-ag-gag-law-2-0-is-unconstitutional/> [<https://perma.cc/3ENK-5YLX>] (accessed Apr. 19, 2020).

<sup>19</sup> *About Us*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/about-us/> (accessed Apr. 19, 2020).

<sup>20</sup> Press Release, Animal Legal Def. Fund, Coalition Files Lawsuit Challenging Iowa’s Second Unconstitutional Ag-Gag Law, (Apr. 22, 2019), <https://aldf.org/article/coalition-files-lawsuit-challenging-iowas-second-unconstitutional-ag-gag-law/> [<https://perma.cc/DK6E-Q9JM>] (accessed Apr. 19, 2020).

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

<sup>22</sup> *States’ Right-To-Farm Statutes*, NAT’L AGRIC. L. CTR., <https://nationalaglawcenter.org/state-compilations/right-to-farm/> [<https://perma.cc/3MR7-DJ2H>] (accessed Apr. 19, 2020).

<sup>23</sup> See April Simpson, *Neighbors Suing Over Pig Fumes Spur ‘Right-to-Farm’ Push*, PEW CHARITABLE TR. (May 22, 2019), <https://www.pewtrusts.org/en/research-and-analy>

can negatively impact the property value of nearby real estate and the quality of life for local residents.<sup>24</sup> RTF laws limit or restrict opportunities to litigate nuisance damages like these.<sup>25</sup> All fifty states had right to farm statutes of varying protections before 2019.<sup>26</sup>

RTF critics note that these laws form legal barriers against rural residents trying to protect their homes and communities from the particularly abusive and exploitative behaviors of large-scale industrial enterprises with wide-reaching legal protections.<sup>27</sup> This government interference in the free market artificially drives the costs of animal products down at the expense of rural American communities.<sup>28</sup>

Noteworthy changes to these laws, across several states, occurred in 2019 in response to twenty-six nuisance suits filed in North Carolina against a division of Smithfield Foods, Inc., Murphy-Brown LLC (the Murphy-Brown cases).<sup>29</sup> Smithfield Foods, the largest pig and pork producer in the world, is a wholly-owned subsidiary of WH Group of China and reported revenue of approximately \$14.4 billion in 2016.<sup>30</sup> Among other activities, Smithfield operates the world's largest pork processing plant, which processes more than 30,000 pigs per day in the town of Tar Heel, about twenty-five miles southeast of Fayetteville.<sup>31</sup> So far, the Murphy-Brown cases, many of which have successfully brought nuisance claims against Smithfield, have "resulted in landmark victories for the neighbors" and communities around Con-

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sis/blogs/stateline/2019/05/22/neighbors-suing-over-pig-fumes-spur-right-to-farm-push [https://perma.cc/R2R6-ZSLZ] (accessed Apr. 19, 2020) ("Agriculture interests this year have successfully lobbied for a host of new state laws to protect farms from litigation over foul smells, loud noises and declining water quality.").

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

<sup>25</sup> *See id.* ("Some of the laws prohibit all but the nearest neighbors from filing a claim.").

<sup>26</sup> *States' Right-To-Farm Statutes*, *supra* note 22.

<sup>27</sup> *See* Simpson, *supra* note 23 ("But critics of the new laws say they pit agriculture operations against their rural neighbors, and that removing landowners' ability to file legitimate nuisance claims takes away their property rights and gives them to the farming operation.").

<sup>28</sup> *See Booker Unveils Bill to Reform Farm System: Legislation Would Crack Down on Monopolistic Practices, Place a Moratorium on Large Factory Farms, Create Level Playing Field for Family Farmers, Ranchers*, CORY BOOKER: U.S. SENATOR FOR N.J. (Dec. 16, 2019), [https://www.booker.senate.gov/?p=press\\_release&id=1036](https://www.booker.senate.gov/?p=press_release&id=1036) [https://perma.cc/DS4G-X3AJ] (accessed Apr. 19, 2020) (describing the monopolistic nature of large scale farming and describing how "contract growers are forced to absorb the risks and the costs, often incurring large amounts of debt").

<sup>29</sup> Kristine A. Tidgren, *Reviewing Key 2019 Agricultural Law Developments*, IOWA ST. U. CTR. FOR AGRIC. L. & TAX'N (Jan. 1, 2020), <https://www.calt.iastate.edu/blogpost/reviewing-key-2019-agricultural-law-developments> [https://perma.cc/BJ3M-6LLG] (accessed Apr. 19, 2020).

<sup>30</sup> U.S. SECURITIES & EXCH. COMM'N, FORM 10-K: ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SEC. EXCHANGE ACT OF 1934 70 (2016), <https://www.sec.gov/Archives/edgar/data/91388/000009138816000064/a201510k.htm#s33DC751E09515DA0BC1B9A3A2CA36435> [https://perma.cc/WS42-Q3UY] (accessed Apr. 19, 2020).

<sup>31</sup> *Smithfield Foods to Expand Its Tar Heel, NC, Plant*, FARM J. PORK (Aug. 22, 2017, 2:11 PM), <https://www.porkbusiness.com/article/smithfield-foods-expand-its-tar-heel-nc-plant> [https://perma.cc/MT5C-4Z8X] (accessed Apr. 19, 2020).

centrated Animal Feeding Operations (CAFOs).<sup>32</sup> In these cases, juries have awarded “tens of millions of dollars in damages” to rural communities of color who have been disproportionately harmed by Smithfield’s extreme nuisance.<sup>33</sup> In June 2019, a complaint filed by the Julius Chambers Center for Civil Rights alleging violations of due process of plaintiffs in the Murphy-Brown cases in the passing of new state laws, shortly after the first verdict, which explicitly limits the recovery of these damages.<sup>34</sup>

Despite the lawsuits, legislators in several states throughout 2019 were busy devising ways to provide more robust protections to industrialized agriculture leviathans in the wake of the Murphy-Brown cases.<sup>35</sup> The Center for Agricultural Law and Taxation at Iowa State University reports:

[L]awmakers in agricultural states across the country reviewed their right to farm laws in 2019, with some taking action to strengthen them. Nebraska (LB 227), West Virginia (S.B. 393), Washington (HB-1011), Utah (SB 93S3), and Oklahoma (HB 2373) all enacted new laws to strengthen the rights of farmers in their states. Georgia (HB 546) and other states may consider similar legislation in 2020.<sup>36</sup>

The American Society for the Prevention of Cruelty to Animals (ASPCA) suggests:

The most troubling pattern emerging in RTF laws is the passage of state-level constitutional amendments. When a state enshrines the “Right to Farm” in its constitution, it elevates farming to the same untouchable status as other constitutional rights . . . . No other for-profit industry is afforded such protections.<sup>37</sup>

### *C. Industrial Animal Agriculture Clashes with the Authority of Local Communities*

In May 2019, Missouri passed Senate Bill 391, which states:

[A]ny orders, ordinances, rules, or regulations promulgated by county commissions and county health center boards shall not impose standards or requirements on an agricultural operation and its appurtenances that are

<sup>32</sup> Joyce Tischler, *This Stinks! Neighbors of Factory Farms Fight Back*, MILLION DOLLAR VEGAN (Nov. 26, 2019), <https://www.milliondollarvegan.com/this-stinks-neighbors-of-factory-farms-fight-back/> [<https://perma.cc/VD7Z-8F2S>] (accessed Apr. 19, 2020).

<sup>33</sup> Lisa Sorg, *Lawsuit Challenges Constitutionality of NC Laws Protecting Hog Industry from Nuisance Actions*, NC POL’Y WATCH (June 21, 2019), [www.ncpolicywatch.com/2019/06/21/lawsuit-challenges-constitutionality-of-nc-laws-protecting-hog-industry-from-nuisance-actions/](http://www.ncpolicywatch.com/2019/06/21/lawsuit-challenges-constitutionality-of-nc-laws-protecting-hog-industry-from-nuisance-actions/) [<https://perma.cc/9U4T-F9PH>] (accessed Apr. 19, 2020).

<sup>34</sup> *See id.* (stating “[t]he 2018 Farm Act was introduced within three weeks of a verdict in the first nuisance trial” and describing the legislatures behavior as “tinkering and amending, and taking out what they think is unconstitutional”).

<sup>35</sup> Tidgren, *supra* note 29.

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

<sup>37</sup> *Oppose “Right to Farm” Legislation*, ASPCA, <https://www.aspc.org/animal-protection/public-policy/oppose-right-farm-legislation> [<https://perma.cc/S3RF-ZZTX>] (accessed Apr. 19, 2020).

inconsistent with or more stringent than any provisions of law, rules, or regulations relating to . . . environmental control . . . air conservation, and water pollution.<sup>38</sup>

This restricts local residents' authority to determine what is best for their immediate community and families.<sup>39</sup> Taking power and dignity of self-governance away from some of the people—rural Americans—who are most negatively impacted by exploitative corporations and their environmentally destructive practices seems inherently problematic.

In 2019, North Dakota debated whether or not state or local communities should have the authority to make zoning determinations for factory feedlots in Senate Bill 2345.<sup>40</sup> This debate also included litigation by the North Dakota Farm Bureau, asserting that a local township has exceeded its legal authority to block the development of a pig farm.<sup>41</sup>

#### D. Two More States Protect Egg-Laying Hens

Since the passage of California's Proposition 12 in 2018, requiring that all eggs sold in the state come from cage-free hens,<sup>42</sup> other states have continued the cage-free trend in 2019. In November 2019, Michigan, one of the largest egg-producing states in the nation,<sup>43</sup> became

<sup>38</sup> *SS/SB 391 Current Bill Summary*, MO. SENATE (Aug. 28, 2019), [https://www.senate.mo.gov/19info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=3780907](https://www.senate.mo.gov/19info/BTS_Web/Bill.aspx?SessionType=R&BillID=3780907) [<https://perma.cc/7GBM-H3Q4>] (accessed Apr. 19, 2020).

<sup>39</sup> Emily Moon, *Missouri Outlaws Rural Residents' Last Line of Protection Against CAFOs*, PAC. STANDARD (May 17, 2019), [https://psmag.com/news/missouri-outlaws-rural-residents-last-line-of-protection-against-cafos?fbclid=IWAR0HYcEZJPFEH8dY7Q5fKzCNptL87qxWrtbJRQ-fHQaFGN\\_vTaRDvP7wPdc](https://psmag.com/news/missouri-outlaws-rural-residents-last-line-of-protection-against-cafos?fbclid=IWAR0HYcEZJPFEH8dY7Q5fKzCNptL87qxWrtbJRQ-fHQaFGN_vTaRDvP7wPdc) [<https://perma.cc/R8T2-ZPKF>] (accessed Apr. 19, 2020).

<sup>40</sup> Patrick Springer, *Critics Say North Dakota Bill Would Strip Local Control of Factory Feedlots*, INFORUM (Apr. 4, 2019, 5:00 AM), <https://www.inforum.com/news/government-and-politics/999150-Critics-say-North-Dakota-bill-would-strip-local-control-of-factory-feedlots> [<https://perma.cc/G23A-SMAZ>] (accessed Apr. 19, 2020); John Hageman, *North Dakota Lawmakers Approve Bill on Animal Feeding Operation Setbacks*, GRAND FORKS HERALD (Apr. 23, 2019, 11:00 AM), <https://www.grandforksherald.com/news/government-and-politics/1009734-North-Dakota-lawmakers-approve-bill-on-animal-feeding-operation-setbacks> [<https://perma.cc/FM92-CJ2H>] (accessed May 23, 2020).

<sup>41</sup> Jenny Schlecht, *Farm Bureau Sues Over Ramsey County Township's Restrictive Animal Feeding Ordinance*, AGWEEK (Jan. 14, 2019, 5:20 PM), <https://www.agweek.com/business/agriculture/4556757-farm-bureau-sues-over-ramsey-county-townships-restrictive-animal> [<https://perma.cc/8KRR-6T3X>] (accessed Apr. 19, 2020).

<sup>42</sup> Gabrielle Canon, *'A Loud and Clear Message': California Passes Historic Farm Animal Protections*, GUARDIAN (Nov. 8, 2018), <https://www.theguardian.com/us-news/2018/nov/08/california-animal-welfare-cage-free-eggs-prop-12-passes> [<https://perma.cc/UL38-GNTL>] (accessed Apr. 19, 2020).

<sup>43</sup> *See Facts & Stats*, UNITED EGG PRODUCERS, <https://unitedegg.com/facts-stats/> (accessed Apr. 19, 2020) (reporting Michigan as the seventh-largest producer of eggs in the United States in 2018); U.S. DEP'T OF AGRIC., NAT'L AGRIC. STAT. SERV., *AGRICULTURAL STATISTICS 2018 VIII-37* (2018) (reporting Michigan as the seventh-largest producer of eggs in the U.S. at 4.2 billion eggs in 2017).



the first Midwestern state to enforce cage-free egg production.<sup>44</sup> Senate Bill 174 (SB 174) amends the Animal Industry Act and requires all state egg production facilities to follow “industry-housing guidelines for cage-free production”<sup>45</sup> by prohibiting the use of any cage system similar to battery, colony, or enriched cages.<sup>46</sup> The new housing facility requirements for egg-laying hens must provide “enrichments that allow the hens to exhibit natural behaviors,” and include “scratch areas, perches, nest boxes, and dust bathing areas.”<sup>47</sup> SB 174 additionally states that business owners cannot “knowingly engage in the sale of any shell egg” that the business owner is or should be aware “is the product of an egg-laying hen that was confined in a manner” inconsistent with the law.<sup>48</sup> The ban on the sale of non-cage-free eggs will take effect on December 31, 2024.<sup>49</sup>

According to the trade organization Michigan Allied Poultry Industries (MAPI), farmers in the state are “spending millions of dollars to transition to cage-free hen houses,” and about 56% of hens currently live cage-free while “[a]n additional 1 million, or 6%, will be cage-free by the end of 2020.”<sup>50</sup> MAPI’s executive director Allison Brink stated that “[t]his leadership between industry and advocacy is happening in Michigan and will make us the largest egg-producing state to mandate cage-free housing standards for egg-laying hens.”<sup>51</sup>

Opponents of the bill in Michigan, such as State Senator Ed McBroom, say cage-free egg laws would raise the price of eggs while unconstitutionally restricting interstate commerce.<sup>52</sup> McBroom also accused seven large Michigan egg producers of having a “monopoly” in the state by “securing loopholes so they would not have to meet standards when selling eggs that are no longer in the shells.”<sup>53</sup>

In May 2019, Washington passed House Bill 2049 (HB 2049), a law setting welfare and space requirements for egg-laying hens.<sup>54</sup> HB

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<sup>44</sup> Kitty Block, *Breaking News: Michigan Passes Law Ending Cages for Hens; First Midwestern State to Do So*, HUMANE SOC’Y U.S.: A HUMANE WORLD (Nov. 21, 2019), [https://blog.humanesociety.org/2019/11/breaking-news-michigan-passes-law-ending-cages-for-hens-first-midwestern-state-to-do-so.html?credit=blog\\_post\\_112219\\_idhomepage](https://blog.humanesociety.org/2019/11/breaking-news-michigan-passes-law-ending-cages-for-hens-first-midwestern-state-to-do-so.html?credit=blog_post_112219_idhomepage) [<https://perma.cc/DF9H-K8XE>] (accessed Apr. 19, 2020).

<sup>45</sup> MICH. COMP. LAWS ANN. § 287.746 (West 2020); S.B. 174, 100th Leg., Reg. Sess. (Mich. 2019).

<sup>46</sup> MICH. COMP. LAWS ANN. § 287.746 (1)(b)(iv).

<sup>47</sup> MICH. COMP. LAWS ANN. § 287.746 (1)(b)(ii).

<sup>48</sup> MICH. COMP. LAWS ANN. § 287.746.

<sup>49</sup> MICH. COMP. LAWS ANN. § 287.746 (9).

<sup>50</sup> David Eggert, *Michigan Senate Votes to Delay Cage-Free Ban for Hens*, U.S. NEWS & WORLD REP. (Oct. 24, 2019, 6:06 PM), <https://www.usnews.com/news/best-states/michigan/articles/2019-10-24/michigan-senate-votes-to-delay-cage-free-ban-for-hens> [<https://perma.cc/6HH6-RJ6X>] (accessed Apr. 19, 2020).

<sup>51</sup> *Id.*

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

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

<sup>54</sup> See Substitute H.B. 2049, 66th Leg., Reg. Sess. (Wash. 2019) (amending WASH. REV. CODE ANN. § 69.25 (West 2019)).

2049, called the Washington Wholesome Eggs and Egg Products Act,<sup>55</sup> passed a few months before Michigan's law with almost identical requirements for eggs sold in the state, though it will come into effect sooner on December 31, 2023.<sup>56</sup> The bill restricts sales on eggs not compliant with the law.<sup>57</sup> The Act also aims to "protect the health and welfare of consumers" in Washington by "promot[ing] food safety, advanc[ing] animal welfare, and protect[ing] against the negative fiscal effects on the state associated with the lack of effective regulation of egg production and sales."<sup>58</sup> Animal rights activists saw both Washington's<sup>59</sup> and Michigan's<sup>60</sup> legislation as significant victories, especially considering Michigan's significant egg production.<sup>61</sup> The Humane Society of the United States (HSUS) estimates that in the mid-2000s, less than 3% of the nation's egg industry had adopted cage-free practices, but as of 2019, over 20% of the industry evolved to a cage-free system.<sup>62</sup>

### E. Lost Permit at Lost Valley

An estimated 30 million gallons of cow manure awaited clean up at Lost Valley Farm in Boardman, Oregon, after the owner filed bankruptcy and sold the farm at an auction in 2019.<sup>63</sup> The mega-dairy was effectively shut down after repeated environmental violations, totaling nearly \$200,000 in fines.<sup>64</sup> When the facility shut down, there was a

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<sup>55</sup> WASH. REV. CODE ANN. § 69.25 (West 2019).

<sup>56</sup> WASH. REV. CODE ANN. § 69.25.065.

<sup>57</sup> WASH. REV. CODE ANN. § 69.25.065.

<sup>58</sup> WASH. REV. CODE ANN. § 69.25.010.

<sup>59</sup> Kitty Block, *Breaking News: Washington Governor Signs Historic Law to End Cage Confinement of Egg-Laying Hens*, HUMANE SOC'Y U.S.: A HUMANE WORLD (May 7, 2019), [https://blog.humanesociety.org/2019/05/breaking-news-washington-governor-signs-historic-law-to-end-cage-confinement-of-egg-laying-hens.html?credit=blog\\_post\\_050719\\_id10579](https://blog.humanesociety.org/2019/05/breaking-news-washington-governor-signs-historic-law-to-end-cage-confinement-of-egg-laying-hens.html?credit=blog_post_050719_id10579) [<https://perma.cc/43ZA-7MAD>] (accessed Apr. 19, 2020).

<sup>60</sup> Block, *supra* note 44.

<sup>61</sup> Jerilyn Jordan, *Michigan Will Become 5th State to Enforce Cage-Free Egg Production Thanks to New Bill*, DETROIT METRO TIMES (Nov. 22, 2019), <https://www.metrotimes.com/news-hits/archives/2019/11/22/michigan-will-become-the-5th-state-to-enforce-cage-free-egg-production-thanks-to-new-bill> [<https://perma.cc/UK67-XMJC>] (accessed Apr. 19, 2020).

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

<sup>63</sup> Tracy Loew, *Troubled Oregon Megadairy Lost Valley Farm Sold to Lone Bidder, Cows Auctioned*, STATESMAN J. (Feb. 19, 2019), <https://www.statesmanjournal.com/story/tech/science/environment/2019/02/19/oregon-dairy-lost-valley-farm-sold-lone-bidder-cows-auctioned/2906759002/> [<https://perma.cc/2H8Y-7T2C>] (accessed Apr. 19, 2020).

<sup>64</sup> *Id.* See generally Tracy Loew, *Oregon Megadairy Lost Valley Farm Fined \$187,230 for 224 Environmental Violations*, STATESMAN J. (Oct. 16, 2018), <https://www.statesmanjournal.com/story/tech/science/environment/2018/10/16/oregon-megadairy-lost-valley-farm-fined-environmental-violations/1659452002/> [<https://perma.cc/S7CK-LH5B>] (accessed Apr. 19, 2020) (listing permit violations, including "[f]illing manure lagoons higher than allowed" and "exceeding the number of animals allowed on site"); OR. DEP'T OF AGRIC., OR. DEP'T ENVTL. QUALITY, RESPONSE TO PUBLIC COMMENTS: CONFINED ANIMAL FEEDING OPERATION (CAFO) NPDES PROPOSED CAFO INDIVIDUAL PERMIT FOR

wide circulation of photos of cows standing up to their knees in manure.<sup>65</sup>

In response to these conditions, Oregon introduced Senate Bill 103 (SB 103) in January 2019, which would require analysis of the economic impact of industrial dairy facilities on smaller dairies, set up an animal-welfare task force, and mandate stricter water use and emission rules for similar operations in Oregon.<sup>66</sup> Additionally, SB 103 would eliminate some protection from nuisance lawsuits under RTF laws by reclassifying some CAFOs as industrial operations.<sup>67</sup>

Tillamook County Creamery Association (Tillamook Creamery) purchased milk from Lost Valley Farm even after their contract terminated.<sup>68</sup> CAFOs in Boardman, Oregon, are the source for over 80% of the milk for dairy products manufactured and sold under the Tillamook Creamery brand, a brand that has recently found itself involved in class action litigation over its deceptive marketing.<sup>69</sup> Boardman is also home to the nation's largest dairy, Threemile Canyon Farms (Threemile Farms),<sup>70</sup> which is roughly the size of Portland,

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LOST VALLEY FARM, GREG TE VELDE (2016), <https://www.oregon.gov/ODA/programs/NaturalResources/Documents/CAFOPublicNotices/LostValleyFarm/LostValleyFarmComments.pdf> [<https://perma.cc/HVA9-86NH>] (accessed Apr. 19, 2020) (providing data on the number of people who opposed the permitting of the mega-dairy in the first place: 1,993 of the comments opposed issuing the permit and 2,117 people signed two petitions opposing it as well).

<sup>65</sup> Leah Douglas, *Lost Valley Debacle Leads to Effort to Limit Mega-Dairies in Oregon*, OREGONIAN (Apr. 5, 2019), <https://www.oregonlive.com/business/2019/04/lost-valley-debacle-leads-to-effort-to-limit-mega-dairies-in-oregon.html> [<https://perma.cc/N66X-RTRX>] (accessed Apr. 19, 2020).

<sup>66</sup> S.B. 103, 80th Legis. Assemb., Reg. Sess. (Or. 2019).

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

<sup>68</sup> Molly Harbarger, *Cheesemaker Tillamook Still Buys Embattled Mega-Dairy's Milk, Despite Terminated Contract*, OREGONIAN (March 22, 2018), [https://www.oregonlive.com/business/2018/03/tillamook-cheesemaker-still\\_bu.html](https://www.oregonlive.com/business/2018/03/tillamook-cheesemaker-still_bu.html) [<https://perma.cc/VHB8-UF5P>] (accessed Apr. 19, 2020).

<sup>69</sup> *Animal Legal Defense Fund Sues Tillamook for Deceptive Advertising*, ANIMAL LEGAL DEF. FUND (Aug. 19, 2019), [https://aldf.org/article/animal-legal-defense-fund-sues-tillamook-for-deceptive-advertising/?fbclid=IWAR33G1cy3cuM\\_gPI201oPa0TAWyQ9UdGhyU7QA0Q6FRZK3YIILtQVBbauz8](https://aldf.org/article/animal-legal-defense-fund-sues-tillamook-for-deceptive-advertising/?fbclid=IWAR33G1cy3cuM_gPI201oPa0TAWyQ9UdGhyU7QA0Q6FRZK3YIILtQVBbauz8) [<https://perma.cc/7ETH-B4G2>] (accessed Feb. 7, 2020); Aimee Green, *Tillamook Cheese Comes Mostly from Cows Kept in Concrete and Dirt Feedlots, Not Green Pastures, Lawsuit Says*, OREGONIAN (Aug. 20, 2019), <https://www.oregonlive.com/news/2019/08/tillamook-ice-cream-cheese-come-mostly-from-cows-kept-in-concrete-and-dirt-feedlots-not-green-pastures-lawsuit-says.html> [<https://perma.cc/F7XK-PUWS>] (accessed Apr. 19, 2020) (describing Boardman as a desert in Oregon and the home to Lost Valley Farm, “the nation’s largest ‘industrialized dairy factory farm’”).

<sup>70</sup> *About*, THREE MILE CANYON FARMS, <https://www.threemilecanyonfarms.com/about> (accessed Apr. 19, 2020); see also Oregonian, *Oregon is Home to the Largest Dairy in the Nation, Here is a Look Inside* at 0:06, YOUTUBE (Aug. 21, 2019), <https://www.youtube.com/watch?v=cusocHxIBdQ&feature=youtu.be> [<https://perma.cc/8BH7-HGFC>] (accessed Apr. 19, 2020) (providing a look inside Threemile Canyon Farm).

Oregon.<sup>71</sup> The general manager of Threemile Farms is, controversially, on the Oregon Board of Agriculture.<sup>72</sup>

Dairy prices have plummeted to a fifty-year low, but excessive government intervention and subsidization continues to agitate the industry, despite several dairies struggling to stay solvent.<sup>73</sup> Threemile Farms has responded by cashing in on another commodity produced by cattle: manure-produced biogas.<sup>74</sup> The biogas “sells for ten times more than fossil fuel natural gas” with a price point driven high by carbon offset credits and an additional tax credit of about “\$70 per cow per year for dairy manure digesters.”<sup>75</sup> House Bill 2020, the controversial Oregon carbon cap bill introduced in 2019, could further increase the market value of this animal-derived fuel product.<sup>76</sup> Threemile Farms received tax-exempt state bonds to publicly finance biogas production at its CAFO.<sup>77</sup> As an alternative to biofuels derived from CAFOs, many have argued that reducing animal-based food product consump-

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<sup>71</sup> *Id.* at 0:11.

<sup>72</sup> See Tracy Leow, *Oregon Gov. Brown's Ag Board Pick Draws More Complaints*, STATESMAN J. (Oct. 14, 2015), <https://www.statesmanjournal.com/story/tech/science/environment/2015/10/14/oregon-gov-browns-ag-board-pick-draws-more-complaints/73949552/> [https://perma.cc/4GM8-BR9G] (accessed Apr. 19, 2020) (outlining complaints made regarding the reappointment of Marty Myers); George Plaven, *Governor Reappoints Threemile Canyon GM to Oregon Ag Board*, EAST OREGONIAN (Sept. 18, 2019), [https://www.eastoregonian.com/news/agriculture/governor-reappoints-threemile-canyon-gm-to-oregon-ag-board/article\\_92c75490-53d3-50ce-9b67-2556f1f23f49.html](https://www.eastoregonian.com/news/agriculture/governor-reappoints-threemile-canyon-gm-to-oregon-ag-board/article_92c75490-53d3-50ce-9b67-2556f1f23f49.html) [https://perma.cc/BTS6-ULYK] (accessed Apr. 19, 2020) (stating that Governor Brown's reappointment of Marty Myers drew the “ire of environmental groups”); Letter from Ivan Maluski, Friends of Family Farmers, et al. to Honorable Governor Kate Brown, (Sept. 28, 2015), <https://www.documentcloud.org/documents/2459161-2015-lettertogov-board-of-ag-threemilecanyon.html> [https://perma.cc/AY32-4YNX] (accessed Apr. 19, 2020) (illustrating the disappointment of multiple interested groups in the reappointment of Marty Myers).

<sup>73</sup> Baylen Linnekin, *The Nation's Biggest Dairy is Failing Despite Relentless Government Intervention*, REASON (Nov. 30, 2019, 8:30 AM), [https://reason.com/2019/11/30/the-nations-biggest-dairy-is-failing-despite-relentless-government-intervention/?fbclid=IWAR1IMwdTovY\\_lilI5BoYJyhQ93cLNSv4fTAnVIMfJ2HZ7EkZVhGnzayoBU](https://reason.com/2019/11/30/the-nations-biggest-dairy-is-failing-despite-relentless-government-intervention/?fbclid=IWAR1IMwdTovY_lilI5BoYJyhQ93cLNSv4fTAnVIMfJ2HZ7EkZVhGnzayoBU) [https://perma.cc/3B33-66UG] (accessed Apr. 19, 2020).

<sup>74</sup> Tracy Loew, *Manure is Big Business at Oregon's Largest Dairy with Conversion to Natural Gas*, STATESMAN J. (Mar. 31, 2019, 7:00 AM), <https://www.statesmanjournal.com/story/tech/science/environment/2019/03/31/oregon-threemile-canyon-farms-dairy-natural-gas-manure/3247197002/> [https://perma.cc/RV9N-UD9L] (accessed Apr. 19, 2020).

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

<sup>76</sup> *Id.* See also Tracy Loew, *Oregon Carbon Cap Bill Now Includes Fuel-Cost Rebates, Fewer Exemptions*, STATESMAN J. (Mar. 25, 2019, 7:21 PM), <https://www.statesmanjournal.com/story/tech/science/environment/2019/03/25/oregon-carbon-cap-bill-fuel-cost-fewer-greenhouse-gas-exemptions/3247167002/> [https://perma.cc/J4YP-MJ3A] (accessed Apr. 19, 2020) (“Legislators working on the controversial legislation, House Bill 2020 aimed at stemming climate change, spent the last few weeks touring the state to hear residents’ concerns. As a result, the bill has been completely rewritten.”).

<sup>77</sup> Loew, *supra* note 74.

tion and production is an ideal way to reduce harmful environmental impacts.<sup>78</sup>

Several groups oppose Threemile Farms' applications for greater public funding and permits.<sup>79</sup> Tarah Heinzen, Senior Staff Attorney for Food & Water Watch, said that approving such permits will allow Threemile Farms "to build a facility to pipe its manure methane to California, greenwashing the gas produced from its vast quantities of cow manure as a renewable energy source, and selling it at a premium."<sup>80</sup> Heinzen further emphasized that "the public will pay for it through tax-exempt bonds," and "[i]f Oregon approves this proposal, it will be a step backwards for our commitment to stop climate change and will further entrench the factory farm system of livestock production."<sup>81</sup>

### III. CASH, ANIMALS, AND TAXES

#### A. *New York Agricultural Property Tax Exemption Extended*

Although previously set to expire in December 2019, New York extended the state's real property tax exemption for "structures and buildings essential to agriculture and horticulture use" through Janu-

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<sup>78</sup> See, e.g., Peter Caton, *Eating Less Meat, More Plants Helps the Environment*, GREENPEACE, <https://www.greenpeace.org/usa/sustainable-agriculture/eco-farming/eat-more-plants/> [https://perma.cc/2MGX-XLF2] (accessed Apr. 19, 2020) ("Eating less meat is crucial for a healthy lifestyle and a healthy planet."); see also Damian Carrington, *Avoiding Meat and Dairy is 'Single Biggest Way' to Reduce Your Impact on Earth*, GUARDIAN (May 31, 2018), <https://www.theguardian.com/environment/2018/may/31/avoiding-meat-and-dairy-is-single-biggest-way-to-reduce-your-impact-on-earth> [https://perma.cc/T72S-ZW9L] (accessed Apr. 19, 2020) ("The scientists also found that even the very lowest impact meat and dairy products still cause much more environmental harm than the least sustainable vegetable and cereal growing."); *Meat and the Environment*, PETA, <https://www.peta.org/issues/animals-used-for-food/meat-environment/> [https://perma.cc/GGC3-NTKR] (accessed Apr. 19, 2020) ("Globally, animal agriculture is responsible for more greenhouse gases than all the world's transportation systems combined. According to the United Nations, a global shift toward a vegan diet is necessary to combat the worst effects of climate change."); Emily Petsko, *Want to Save the Environment? Eat Less Meat*, MENTAL FLOSS (Oct. 15, 2018), <https://www.mentalfloss.com/article/560548/want-save-environment-eat-less-meat> [https://perma.cc/3Q26-8KQE] (accessed Apr. 19, 2020) (describing how a decrease in dependency on animal products and a transition to a more plant-based diet is one of the most effective ways to be more sustainable and environmentally responsible).

<sup>79</sup> Letter from Tarah Heinzen, Food & Water Watch, et al., to Nancy Swofford, Air Permit Coordinator, DEQ Eastern Region (Apr. 25, 2019), [https://www.centerforfoodsafety.org/files/20190425-coalition-comments-on-wof-pnw-threemile-project-llc-title-v-permit\\_38733.pdf](https://www.centerforfoodsafety.org/files/20190425-coalition-comments-on-wof-pnw-threemile-project-llc-title-v-permit_38733.pdf) [https://perma.cc/84PY-26QG] (accessed Apr. 19, 2020).

<sup>80</sup> *With Oregon Mega-Dairy Reform Bills Dead, Tillamook Mega-Dairy Supplier Seeks Public Funding and DEQ Approval for Project to Pipe Methane Out of State for Cash*, CTR. FOR FOOD SAFETY (Apr. 26, 2019), <https://www.centerforfoodsafety.org/press-releases/5579/with-oregon-mega-dairy-reform-bills-dead-tillamook-mega-dairy-supplier-seeks-public-funding-and-deq-approval-for-project-to-pipe-methane-out-of-state-for-cash> [https://perma.cc/DKK7-57UB] (accessed Apr. 19, 2020).

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

ary 2029.<sup>82</sup> The law prohibits tax increases based on the value of construction or improvement of structures that are essential for agricultural operations.<sup>83</sup> Several real-property improvements for use in intensive animal agriculture, however, are included in the bill's exceptions.<sup>84</sup> The President of the New York Farm Bureau remarked, "[t]his law, which keeps new farm buildings off the tax rolls for [ten] years, is essential to encourage new farm investment, and it will make it more economical to grow family farm businesses. The tax savings is especially important in today's tough agricultural economy."<sup>85</sup>

New York's Real Property Tax Law, Section 483, costs the state of New York millions of dollars in lost revenue opportunities.<sup>86</sup> Indirect farm subsidies often allege to help struggling family farmers, yet these tax benefits often make corporations wealthy instead.<sup>87</sup> A pamphlet about the farm building exemptions explains, "[f]or example, a building on a dairy farm in which cows are fed and milked would qualify as used directly and exclusively in the raising and production for sale of milk."<sup>88</sup> As The Heritage Foundation, a conservative and influential research institution, is keen to point out, these funds likely contribute to a windfall of farm subsidies and corporate welfare for 'big-ag,'<sup>89</sup> thereby empowering the exploitation of both taxpayers and animals for the benefit of wealthy corporations. The Heritage Foundation further asserts the farm subsidies "[b]urden American families with higher taxes and higher food prices. They harm small farmers by excluding them from subsidies, raising land prices, and financing farm consolidation . . . . They are falsely promoted as saving the family farm and protecting the food supply."<sup>90</sup>

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<sup>82</sup> Press Release, Robert G. Ort, Senator, N.Y. State Senate, Farm Structure Property Tax Exemption Extended (Dec. 11, 2018), <https://www.nysenate.gov/newsroom/press-releases/robert-g-ortt/farm-structure-property-tax-exemption-extended> [<https://perma.cc/N2E2-ZLYT>] (accessed Apr. 19, 2020).

<sup>83</sup> N.Y. STATE DEP'T TAXATION & FIN., ASSESSOR MANUAL, EXEMPTION ADMIN.: RPTL SECTION 483 (2018).

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

<sup>85</sup> *Governor Cuomo Announces Extension of Real Property Tax Exemption on Farm Buildings*, PRESS OFF. OF GOVERNOR ANDREW CUOMO (Dec. 3, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-extension-real-property-tax-exemption-farm-buildings> [<https://perma.cc/2MPB-T5TG>] (accessed Apr. 19, 2020).

<sup>86</sup> See Rachel Silberstein, *Property Tax Exemption on Farms Extended Another 10 Years*, TIMES UNION (Dec. 4, 2018), <https://www.timesunion.com/news/article/Property-tax-exemption-on-farms-extended-another-13442092.php> [<https://perma.cc/A7YT-24HJ>] (accessed Apr. 19, 2020) (implying that although farms saved \$112.8 million since the exemption was last renewed in 2008, that money could have been used elsewhere by the state).

<sup>87</sup> BRIAN M. RIEDL, HERITAGE FOUND.: BACKGROUNDER No. 2043, HOW FARM SUBSIDIES HARM TAXPAYERS, CONSUMERS, AND FARMERS, TOO, (2007), <https://www.heritage.org/agriculture/report/how-farm-subsidies-harm-taxpayers-consumers-and-farmers-too> [<https://perma.cc/LPX9-JQBC>] (accessed Apr. 19, 2020).

<sup>88</sup> N.Y. STATE OFFICE REAL PROP. TAX SERV., FARM BUILDING EXEMPTIONS QUESTIONS & ANSWERS (2012).

<sup>89</sup> RIEDL, *supra* note 87.

<sup>90</sup> *Id.* at 12–13.

Encouraging the development of CAFOs also runs the risk of lowering neighboring property values for tax purposes. Numerous studies have shown that the neighbors of CAFOs experience diminished property values.<sup>91</sup> In turn, owners whose property has fallen in value because of a neighboring CAFO, and who can show evidence of reduced property values, might be able to use tax grieving procedures to reduce property assessment and tax liability to reflect diminished market value accurately.<sup>92</sup> This devaluation of nearby property could further reduce property tax revenue for the state beyond the face-value of the original exemption.

### B. *Beginning Farmer Tax Credit Programs*

In May 2019, Iowa enacted House File 768 (HF 768), enhancing Iowa's Beginning Farmer Tax Credit program, which allows the Iowa Finance Authority (IFA) to issue tax credits worth up to \$12 million each tax year to eligible taxpayers.<sup>93</sup> Regarding HF 768, Iowa's Secretary of Agriculture stated, "[t]his is a great opportunity for existing landowners to earn tax credit and help new farmers establish their own operations."<sup>94</sup> The program includes potential tax credits for the leasing of agricultural land, depreciable machinery, or equipment and buildings.<sup>95</sup> To qualify, a taxpayer must have a "low or moderate net worth" of less than \$680,590 for 2019, a figure set by IFA.<sup>96</sup> "Net worth is defined as the difference between assets and liabilities."<sup>97</sup> These exceptional tax treatments are further augmented by House File 778, also signed by the Governor of Iowa in May 2019, which expands the circumstances in which capital gains deductions are available for the sale of property used in a farming business in Iowa.<sup>98</sup>

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<sup>91</sup> Laura B. Murphy, *CAFO Grief: Using Tax Grieving Procedures to Protest Industrial Animal Factories*, 23 J. ENVTL. L. & LITIG. 357, 386 (2008).

<sup>92</sup> *Id.* at 375.

<sup>93</sup> H. FILE 768, 88th Gen. Assemb. Reg. Sess. (Iowa 2019).

<sup>94</sup> *Beginning Farmer Tax Credit Creates Opportunities for Landowners and New Producers*, IOWA DEP'T AGRIC. & LAND STEWARDSHIP (May 21, 2019), <https://iowaagriculture.gov/news/beginning-farmer-tax-credit-creates-opportunities> [<https://perma.cc/QF4R-YXYF>] (accessed Apr. 19, 2020).

<sup>95</sup> *Beginning Farmer Tax Credit Program*, IOWA FIN. AUTH., <https://www.iowa-finance.com/beginning-farming-programs/beginning-farmer-tax-credit-program/> [<https://perma.cc/G7D4-VGDA>] (accessed Apr. 19, 2020).

<sup>96</sup> Kristine A. Tidgren, *Bill Sent to Governor Will Enhance Iowa's Beginning Farmer Tax Credit Program*, IOWA ST. U. CTR. FOR AGRIC. L. & TAX'N: THE AG DOCKET (April 29, 2019), <https://www.calt.iastate.edu/blogpost/bill-sent-governor-will-enhance-iowas-begginning-farmer-tax-credit-program> [<https://perma.cc/8N9W-35X9>] (accessed Apr. 19, 2020).

<sup>97</sup> Akhilesh Ganti, *What Is Net Worth?*, INVESTOPEDIA (Jan. 20, 2020), <https://www.investopedia.com/terms/n/networth.asp> [<https://perma.cc/2G4Z-ULF9>] (accessed Apr. 19, 2020).

<sup>98</sup> Dirck Steimel, *Reynolds Signs Bills to Aid Young Farmers*, IOWA FARM BUREAU (May 28, 2019), <https://www.iowafarmbureau.com/Article/Reynolds-signs-bills-to-aid-young-farmers> [<https://perma.cc/F8FX-T6EM>] (accessed July 1, 2020).

In April 2019, Ohio introduced legislation, House Bill 183, which would provide “income tax credits for established Ohio farmers that sell or rent” farm property to “beginning farmers that participate in a financial management program.”<sup>99</sup> Ohio State Representative John Patterson said, “The bill incentivizes retiring farmers to seek out those who would succeed them in return for narrow and targeted tax credits . . . . The bill is an attempt to address one of the most challenging issues facing our farm families today—succession.”<sup>100</sup>

### C. Sale and Use Tax Rebate Program

To foster livestock development, South Dakota made tax incentives available under a new sale and use tax rebate program in 2019 for livestock development.<sup>101</sup> The program, which “can provide large payments to counties that approve new [CAFOs],” was “criticized by opponents of CAFOs as a form of ‘bribery’ and a heavy-handed intrusion by the state” on local control of land use.<sup>102</sup> A former South Dakota lawmaker and outspoken critic of CAFOs stated, “It’s bribery, pure and simple . . . . It’s the entity that is giving them the money, and that’s why it’s bribery.”<sup>103</sup> Conversely, the state’s Secretary of Agriculture publicly refuted the bribery assertions by stating, “[i]t’s a win-win for livestock development, for increasing the economic development that we have in our state . . . . We know all counties are financially strapped and so it’s good.”<sup>104</sup>

### D. New Farm Income Requirements for Popular Deduction in North Dakota

A farm home tax exemption for North Dakota property owners was created in response to a farming crisis in the 1980s and, in 2019,

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<sup>99</sup> See Doug Schmitz, *New Law to Enhance Iowa’s Beginning Farmer Tax Credit*, FARM WORLD (June 26, 2019), <http://www.farmworldonline.com/news/NewsArticle.asp?newsid=24259> [<https://perma.cc/2QCV-HSYL>] (accessed Apr. 19, 2020) (describing the introduction of Ohio House Bill 183).

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

<sup>101</sup> Press Release, S.D. Governor’s Office of Econ. Dev., Sales and Use Tax Rebate Programs Available for Livestock Development (May 13, 2019), <https://sreadytowork.com/media-center/press-releases/sales-and-use-tax-rebate-programs-available-for-livestock-development/> [<https://perma.cc/P9L8-MELK>] (accessed Apr. 19, 2020).

<sup>102</sup> Bart Pfankuch, *State Financial Incentive Program for CAFOs Criticized as ‘Bribery’*, S.D. NEWS WATCH (Dec. 11, 2019), <https://www.sdnewswatch.org/stories/state-financial-incentive-program-for-cafos-criticized-as-bribery/> [<https://perma.cc/SW2A-G8PF>] (accessed Apr. 19, 2020).

<sup>103</sup> *Id.*

<sup>104</sup> Michelle Rook, *SD State Officials Refute Tax Incentive for Livestock Development is a ‘Bribe’*, AGWEEK (June 24, 2019), <https://www.agweek.com/business/agriculture/4628833-sd-state-officials-refute-tax-incentive-livestock-development-bribe> [<https://perma.cc/GNC6-EME3>] (accessed Apr. 19, 2020).



included new requirements to qualify.<sup>105</sup> Cass County recently conducted an audit of “375 farmers who were receiving benefits” from the exemption and found that 47% of those who claimed the exemption did not actually qualify.<sup>106</sup> The audits revealed that taxpayers incorrectly claimed \$37.9 million worth of property as exempt, resulting in a tax revenue loss of \$1.7 million.<sup>107</sup> The tax commissioner for North Dakota noted that claiming the exemption had previously been based on an honor system.<sup>108</sup> The new requirements include a higher percentage of income from farming activity but remove the limit for non-farm income.<sup>109</sup> The McKenzie County Tax Director stated, “We have many of our farmers and ranchers who have their spouse working, are taking side jobs or have had oil income. So removing that limit could mean more farmers and ranchers could be eligible for the farm home property tax exemption.”<sup>110</sup> The deduction impacts more than 11,000 rural residents in North Dakota that reported making the tax claim.<sup>111</sup> North Dakota’s tax commissioner said, “We believe that more people likely will become eligible . . . . We did make that known, so legislators had that in front of them.”<sup>112</sup> A separate law will require those claiming the exemption to file confidential farm income documentation every two years.<sup>113</sup>

North Dakota State Senator Dwight Cook has been critical of the exemption in the past, stating, “[m]ore and more people are becoming aware of the inequity here . . . . It’s not fair that a group of people doesn’t have to pay property taxes on their homes simply because of the occupation that they have.”<sup>114</sup>

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<sup>105</sup> Patrick Springer, *North Dakota Broadens Farm Home Tax Exemption, But Proof of Ag Income Now Required*, AGWEEK (May 9, 2019), <https://www.agweek.com/news/1019030-North-Dakota-broadens-farm-home-tax-exemption-but-proof-of-ag-income-now-required> [<https://perma.cc/R5J3-H4S6>] (accessed Apr. 19, 2020).

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

<sup>107</sup> *Id.*

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

<sup>109</sup> *See id.* (“Eligibility used to require that 50 percent or more of a farmer’s net income came from farming activities. Under a law passed in the recently completed 2019 session, to claim the farm home property tax exception, filers must show that 66 percent of their gross income is derived from farming activities. The new law also strips a \$40,000 limit for non-farm income, including a spouse’s salary.”).

<sup>110</sup> Neal A. Shipman, *Farm Home Property Tax Exemption Broadened*, MCKENZIE CTY. FARMER (Jan. 15, 2020), <http://www.watfordcitynd.com/latest-news/farm-home-property-tax-exemption-broadened/> [<https://perma.cc/W5XN-V5R4>] (accessed Apr. 19, 2020).

<sup>111</sup> *See* Springer, *supra* note 105 (“A survey of North Dakota counties found that at least 11,756 rural residences were granted the property tax exemption last year. That likely is a significant undercount, however, since 14 of the 53 counties did not respond.”).

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

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

<sup>114</sup> Jill Schramm, *Farm Tax Exemption Both Loved and Hated*, MINOT DAILY NEWS (Aug. 17, 2017), <https://www.minotdailynews.com/news/local-news/2017/08/farm-tax-exemption-both-loved-and-hated/> [<https://perma.cc/VRA4-Z6QZ>] (accessed Apr. 19, 2020).

*E. Tax Credits to Promote the Adoption of a Dog or Cat  
from a Shelter*

In 2019, Massachusetts proposed a new license plate and tax credit to encourage adopting companion animals from shelters.<sup>115</sup> The tax credit, with a cap of \$500 for three consecutive years, would offer:

\$400 for a dog over 7 years of age, or a disabled dog or cat, regardless of age, as determined by the qualified animal rescue organization; or \$200 for a dog 1 to 6 years old, or a cat over 7 years old, or \$100 for a cat 1 to 6 years old, maximum of 2 qualified pets per household, as determined by the qualified animal rescue organization. The tax credit shall be distributed over a period of 3 tax years . . . as long as the qualified pet is still in the adopters' ownership and care.<sup>116</sup>

The Massachusetts Federation of Dog Clubs and Responsible Dog Owners, as well as the American Kennel Club, oppose the legislation because they believe “[t]here is no public benefit created by using taxpayer-sourced money to encourage purchase of any animal, and it is inherently unfair to incentivize purchase of a shelter-sourced animal.”<sup>117</sup> A similar law has reportedly been under consideration in New York.<sup>118</sup>

#### IV. STATE CENSORSHIP OF PLANT-BASED FOOD PRODUCTS

The rise in popularity of plant-based meat and dairy alternatives along with the competitive threat of cell-based meat innovation, real animal meat produced from a small sample of animal tissue,<sup>119</sup> is causing the conventional meat and dairy industries to turn to state governments to help keep their industries afloat.<sup>120</sup> Over twenty-five states across the country have introduced legislation dealing with food

<sup>115</sup> H.R. 2573, 191st Gen. Ct., (Mass. 2019).

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

<sup>117</sup> *Oppose HB 2573*, MASS. FED’N DOG CLUBS & RESPONSIBLE DOG OWNERS (Mar. 3, 2019), [https://www.massfeddogs.org/PositionPapers19/MassFed%20HB2573%20\(Muradian\).pdf](https://www.massfeddogs.org/PositionPapers19/MassFed%20HB2573%20(Muradian).pdf) [<https://perma.cc/2QQJ-YDL2>] (accessed Apr. 19, 2020).

<sup>118</sup> Brett Alan, *New Law Would Give Tax Credits to People Who Rescue Pets*, WYRK (Dec. 4, 2019), <https://wyrk.com/new-law-would-give-tax-credits-to-people-who-rescue-pets/> [<https://perma.cc/PP9G-KB6B>] (accessed Apr. 19, 2020); *New Law May Give Tax Credit to Those Who Adopt Pets*, WROC (Dec. 3, 2019, 12:37 PM), <https://www.rochesterfirst.com/pets/new-law-may-give-tax-credit-to-those-who-adopt-pets/> [<https://perma.cc/HPR6-39TG>] (accessed Apr. 19, 2020).

<sup>119</sup> See BRIANNA CAMERON & SHANNON O’NEILL, THE GOOD FOOD INST., STATE OF THE INDUSTRY REPORT: CELL-BASED MEAT 4 (2019), <https://www.gfi.org/non-cms-pages/splash-sites/soi-reports/files/SOI-Report-Cell-Based.pdf> [<https://perma.cc/4TQT-7PCC>] (accessed Apr. 19, 2020) (detailing the production of cell-based meat broadly).

<sup>120</sup> See, e.g., THE GOOD FOOD INST., FOOD LABEL CENSORSHIP: ANTI-MARKET & ANTI-SPEECH (2019), [https://www.gfi.org/images/uploads/2019/11/Food-Label-Censorship\\_Anti-Market\\_Anti-Free-Speech.pdf](https://www.gfi.org/images/uploads/2019/11/Food-Label-Censorship_Anti-Market_Anti-Free-Speech.pdf) [<https://perma.cc/W94M-J4UK>] (accessed Apr. 19, 2020) (“Confronted with the success of plant-based meats and milks and the looming competitive threat of cell-based meat, the conventional meat and dairy industries have turned to the government to help protect their market share.”).

label censorship,<sup>121</sup> which typically bans the use of meat or dairy terms on the labels of plant-based foods and cell-based meat products.<sup>122</sup> Arkansas,<sup>123</sup> Louisiana,<sup>124</sup> Maryland,<sup>125</sup> and Mississippi,<sup>126</sup> are among the states that passed bills in 2019, restricting how alternative meat or dairy companies label their food.

In March 2019, Arkansas passed House Bill 1407 (HB 1407), “An Act to Require Truth in Labeling of Agricultural Products That Are Edible by Humans,” which aims to protect the state’s meat producers by banning the use of the word meat in plant-based or cell-based products.<sup>127</sup> However, unlike other food label censorship laws, this was the first bill aimed at protecting Arkansas’ rice industry, the largest in the nation, in what some are calling a “veg-on-veg crime” by curbing the use of the word *rice* in products selling alternatives such as cauliflower rice.<sup>128</sup> HB 1407 imposes a \$1,000 fine for each labeling violation.<sup>129</sup> State Representative David Hillman, who introduced and spearheaded the bill, argued that “[t]his law only affects people who want to deceive the public about how their food originated.”<sup>130</sup>

In Louisiana, Governor John Bel Edwards signed the state’s food label restrictions with Senate Bill 152 (SB 152), the Truth in Labeling of Food Products Act,<sup>131</sup> in June 2019.<sup>132</sup> SB 152 states that the definition of meat does not include any “[s]ynthetic product derived from a plant, insect, or other source,” including cell-based meat.<sup>133</sup> Additionally, it prohibits anyone from “misbrand[ing] or misrepresent[ing] any food product as an agricultural product” and “[u]tilizing a term that is

<sup>121</sup> Elaine Watson, *Plant-Based and Cell-Cultured ‘Meat’ Labeling Under Attack in 25 States*, FOOD NAVIGATOR-USA (May 29, 2019), [https://www.foodnavigator-usa.com/Article/2019/05/29/Plant-based-and-cell-cultured-meat-labeling-under-attack-in-25-states# \[https://perma.cc/MD4A-QYT5\]](https://www.foodnavigator-usa.com/Article/2019/05/29/Plant-based-and-cell-cultured-meat-labeling-under-attack-in-25-states# [https://perma.cc/MD4A-QYT5]) (accessed Apr. 19, 2020).

<sup>122</sup> THE GOOD FOOD INST., *supra* note 120.

<sup>123</sup> ARK. CODE ANN. § 2-1-301 (West 2019).

<sup>124</sup> LA. STAT. ANN. §§ 4741–4746 (2019).

<sup>125</sup> S.B. 922, 439th Gen. Assemb., (Md. 2019); MD. CODE ANN., HEALTH-GEN. § 21-401 (West 2019).

<sup>126</sup> MISS. CODE ANN. §75-33-3 (West 2019).

<sup>127</sup> H.B. 1407, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019); Nathan Owens, *Truth in Labeling Inked by Governor*, ARK. DEMOCRAT GAZETTE (Mar. 20, 2019, 1:59 AM), <https://www.arkansasonline.com/news/2019/mar/20/truth-in-labeling-inked-by-governor-201/> [<https://perma.cc/E7M3-5MXL>] (accessed Apr. 19, 2020); Rich Haridy, *Federal Court Rules Veggie Burgers Can Still Be Named Burgers, for Now*, NEW ATLAS (Dec. 15, 2019), <https://newatlas.com/science/federal-court-arkansas-tofurky-aclu-plant-meat-labeling-law/> [<https://perma.cc/P9JH-52A7>] (accessed Apr. 19, 2020).

<sup>128</sup> Baylen Linnekin, *Arkansas’ New Food-Labeling Law is Veg-on-Veg Crime*, REASON (Apr. 13, 2019, 8:30 AM), <https://reason.com/2019/04/13/arkansas-new-food-labeling-law-is-veg-on/> [<https://perma.cc/WH5F-Y7QA>] (accessed Apr. 19, 2020).

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

<sup>130</sup> Owens, *supra* note 127.

<sup>131</sup> S.B. 152, Reg. Sess. (La. 2019).

<sup>132</sup> *No More Veggie Bacon? Louisiana Governor Signs Labeling Bill*, ASSOCIATED PRESS (June 17, 2019), [https://apnews.com/d6ae77ba164e4343a124c299454d32a4 \[https://perma.cc/N4TP-NPER\]](https://apnews.com/d6ae77ba164e4343a124c299454d32a4 [https://perma.cc/N4TP-NPER]) (accessed Apr. 19, 2020).

<sup>133</sup> LA. STAT. ANN. § 4743(10)(a)–(b).

the same as or deceptively similar to a term that has been used or defined historically in reference to a specific agricultural product.”<sup>134</sup> Louisiana’s agriculture commissioner will begin enforcing the law in October 2020, and violators could face up to \$500 in fines per day for violations.<sup>135</sup>

Maryland, on the other hand, passed legislation that would restrict only the labeling of dairy products, a law similar to and contingent on North Carolina’s law enforcing nondairy labeling standards.<sup>136</sup> Senate Bill 922 prohibits individuals “from stating on a label of a food product that the product is milk unless the product meets a certain definition.”<sup>137</sup> To ‘alleviate’ interstate commerce, both Maryland and North Carolina laws will not come into effect until other states pass similar laws.<sup>138</sup> “If Maryland and North Carolina can get other states to join the compact, then farmers will have [a significant advantage in getting] the FDA to enforce its current definition of milk . . . .”<sup>139</sup> For example, Wisconsin State Senator Howard Marklein introduced a bill in his state to align with the North Carolina and Maryland laws.<sup>140</sup> If passed, the Wisconsin bill would likewise only go into effect after at least ten states pass similar legislation by June 30, 2031.<sup>141</sup> As of the time this Review was written, the bill was in committee and available for scheduling in the 2020 legislative session.<sup>142</sup>

Supporters of food labeling laws claim that the efforts to mandate labeling requirements come from growing concerns that “shoppers are mistaking foods that claim to look, feel and taste like meat and poultry, for the real thing.”<sup>143</sup> Opponents argue that these laws “infringe on First Amendment rights and violate federal labeling laws that prohibit mislabeling.”<sup>144</sup> Companies that produce plant-based meat alter-

<sup>134</sup> LA. STAT. ANN. §§ 4744(B), (B)(9).

<sup>135</sup> *No More Veggie Bacon?*, *supra* note 132.

<sup>136</sup> S.B. 922, Reg. Sess. (Md. 2019); *Legislation: SB0922*, MD. GEN. ASSEMBLY (Feb. 3, 2020, 2:35 PM), <http://mgaleg.maryland.gov/mgaweb/site/legislation/details/sb0922?ys=2019rs> [<https://perma.cc/KS9E-7694>] (accessed Apr. 19, 2020).

<sup>137</sup> S.B. 922, Reg. Sess. (Md. 2019).

<sup>138</sup> Samantha Hogan, *Political Notes: Dairy Compact Would Ban Labeling Soy and Almonds as ‘Milk’*, FREDERICK NEWS-POST (Mar. 21, 2019), [https://www.fredericknews.com/news/economy\\_and\\_business/agriculture/political-notes-dairy-compact-would-ban-labeling-soy-and-almonds/article\\_394bfc49-5b45-535a-8ad7-824375adba32.html](https://www.fredericknews.com/news/economy_and_business/agriculture/political-notes-dairy-compact-would-ban-labeling-soy-and-almonds/article_394bfc49-5b45-535a-8ad7-824375adba32.html) [<https://perma.cc/KJT9-QAFT>] (accessed Apr. 19, 2020).

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

<sup>140</sup> S.B. 466, 104th Reg. Sess. (Wis. 2019); *Almond “Milk” is Not Milk, Veggie “Burgers” are Not Burgers & Fake “Swiss” is Not Cheese!*, HOWARD MARKLEIN ST. SENATOR (Sept. 20, 2019), <https://legis.wisconsin.gov/senate/17/marklein/media/weekly-columns/almond-milk-is-not-milk-veggie-burgers-are-not-burgers-and-fake-swiss-is-not-cheese/> [<https://perma.cc/6T2F-M5RX>] (accessed Apr. 19, 2020).

<sup>141</sup> *Id.*

<sup>142</sup> *Senate Bill 466*, WIS. ST. LEGISLATURE, <https://docs.legis.wisconsin.gov/2019/proposals/sb466> [<https://perma.cc/8FLV-Q3NP>] (accessed Apr. 19, 2020).

<sup>143</sup> Owens, *supra* note 127.

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

natives, such as Tofurky and Upton's Natural, are fighting back against states passing such laws with lawsuits in federal court.<sup>145</sup>

Instead of continuing the battle in court, Mississippi legislators rewrote their law so it would not violate the First Amendment.<sup>146</sup> The new proposal still prohibits the labeling of plant-based products as meat or a "meat food product," but will make exceptions for labeling products as "plant-based," "meatless," "vegetarian," or "vegan."<sup>147</sup> The legislature has yet to adopt these proposed changes or put them into force.<sup>148</sup>

## V. STATE REGULATION OF FISH AND WILDLIFE

### A. *New Restrictions on Wildlife Killing Contests*

Coyotes and other fur-bearing animals had a relatively good year in 2019 as Arizona, New Mexico, and Massachusetts joined states like California, Colorado, Maryland, and Vermont in banning certain types of organized killing contests.<sup>149</sup> Participants of wildlife killing contests usually compete to kill the biggest, the largest quantity, or the heaviest cumulative weight of animals, with the majority of these contests concentrating on coyotes.<sup>150</sup> The contests often violate state gambling laws,<sup>151</sup> but a single contest can draw more than 600 participants.<sup>152</sup>

<sup>145</sup> Press Release, ACLU, Tofurky Mounts Free Speech Challenge Against Arkansas Meat Label Law (July 22, 2019), <https://www.aclu.org/press-releases/tofurky-mounts-free-speech-challenge-against-arkansas-meat-label-law> [https://perma.cc/TSB3-5BAW] (accessed Apr. 19, 2020); Emily Wagster Pettus, *Defenders of Vegan Bacon Sue Mississippi Over Labeling Law*, ABC NEWS (Jul. 2, 2019, 1:52 PM), <https://abcnews.go.com/Lifestyle/wireStory/lawsuit-mississippi-meat-labeling-law-violates-free-speech-64086741> [https://perma.cc/BT2G-XNW2] (accessed Apr. 19, 2020).

<sup>146</sup> Tim Cushing, *After Being Sued, Mississippi Rewrites Its Unconstitutional Ban on the Use of Meat Words by Vegan Food Producers*, TECHDIRT (Sept. 13, 2019, 12:01 PM), <https://www.techdirt.com/articles/20190910/09384142957/after-being-sued-mississippi-rewrites-unconstitutional-ban-use-meat-words-vegan-food-producers.shtml> [https://perma.cc/7C63-DSP5] (accessed Apr. 19, 2020).

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

<sup>148</sup> *Id.*

<sup>149</sup> *Ending Killing Contests in Massachusetts*, ANIMAL LEGAL DEF. FUND (Dec. 18, 2019), <https://aldf.org/case/ending-killing-contests-in-massachusetts/> [https://perma.cc/66MH-7MT4] (accessed Apr. 19, 2020); Kitty Block, *Breaking News: Arizona Bans Wildlife Killing Contests*, HUMANE SOC'Y U.S.: A HUMANE WORLD (Sept. 4, 2019), <https://blog.humanesociety.org/2019/09/breaking-news-arizona-bans-wildlife-killing-contests.html> [https://perma.cc/H2RT-UTKD] (accessed Apr. 19, 2020).

<sup>150</sup> Karin Brulliard, *Coyote-Killing Contests Face Growing Outrage, State Bans*, WASH. POST (May 17, 2019, 5:00 AM), <https://www.washingtonpost.com/science/2019/05/17/predator-hunting-contests-face-bans-amid-backlash-several-states/> [https://perma.cc/M9JL-H6V2] (accessed Apr. 19, 2020).

<sup>151</sup> See *Killing Contests*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/killing-contests-and-the-law/> [https://perma.cc/5YYP-5D2A] (accessed Apr. 19, 2020) (explaining that the Animal Legal Defense Fund has successfully challenged coyote-killing contests because such contests function "as illegal gambling operation, given the cash and other prizes at stake").

<sup>152</sup> HUMANE SOC'Y U.S., WILDLIFE KILLING CONTESTS: A GUIDE TO ENDING THE BLOOD SPORT IN YOUR COMMUNITY 1, 5 (Oct. 2018), <https://volunteers.humanesociety.org/the>

Hunters dump the carcasses after organizers award the prizes because they have no use for them, resulting in the disruption and displacement of predatory animal packs.<sup>153</sup>

New Mexico's Senate Bill 76 (SB 76) was a response to an increase in coyote killings throughout the state,<sup>154</sup> and will make it "unlawful for a person to organize, cause, sponsor, arrange, hold or participate in a coyote-killing contest."<sup>155</sup> While SB 76 outlaws and criminalizes organizing or participating in killing contests, it does not entirely prohibit hunting or killing coyotes.<sup>156</sup> Outside of the competition context, coyotes are only subject to a few hunting and trapping restrictions.<sup>157</sup> Although members from both parties introduced the legislation,<sup>158</sup> it turned into "a clash between urban and rural lawmakers" and narrowly passed in both legislative chambers.<sup>159</sup>

On the other hand, Arizona's ban on killing contests came after the Governor's Regulatory Review Council voted unanimously to approve a rule initiated by the Arizona Game and Fish Commission.<sup>160</sup> Like New Mexico's legislation, the commission banned organizing, participating in, promoting, and sponsoring such contests.<sup>161</sup> Arizona's ban, however, further extends the ban to include killing contests for

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Hub/?downloadFile=1&table=resources&field=file&check=b4b882f6c9a0d640fea6e379e97bc075&key=695 [https://perma.cc/BH48-V9TD] (accessed Apr. 19, 2020).

<sup>153</sup> *Id.*; *Ending Killing Contests in Massachusetts*, *supra* note 149.

<sup>154</sup> LEGIS. FIN. COMM., FISCAL IMPACT REP., PROHIBIT COYOTE KILLING CONTESTS, SB76/aSCONC at 2 (N.M. Feb. 2019).

<sup>155</sup> N.M. STAT. ANN. § 30-18-16(A) (West 2019).

<sup>156</sup> N.M. STAT. ANN. § 30-18-16(E); Robert Nott, *Coyote-Killing Contest Ban Now up to Governor*, NM POL. REP. (Mar. 14, 2019), <https://nmpoliticalreport.com/2019/03/14/coyote-killing-contest-ban-now-up-to-governor/> [https://perma.cc/N3FN-X5NP] (accessed Apr. 19, 2020).

<sup>157</sup> Nicole Pallotta, *New Mexico Bans Coyote-Killing Contests*, ANIMAL LEGAL DEF. FUND (July 5, 2019), <https://aldf.org/article/new-mexico-bans-coyote-killing-contests/> [https://perma.cc/EG99-8RCP] (accessed Apr. 19, 2020).

<sup>158</sup> *See* Nott, *supra* note 156 ("Sen. Mark Moores, R-Albuquerque, and Sen. Jeff Steinborn, D-Las Cruces, introduced Senate Bill 76.")

<sup>159</sup> Dan Boyd & Dan Mckay, *Governor Signs Bill Banning Coyote-Killing Contests*, ALBUQUERQUE J. (Apr. 2, 2019, 9:42 PM), <https://www.abqjournal.com/1299092/governor-signs-bill-banning-coyote-killing-contests-in-nm.html> [https://perma.cc/HRF3-AX5W] (accessed Apr. 19, 2020); Milan Simonich, *Bill Banning Coyote-Killing Contests Gets Senate OK*, SANTA FE NEW MEXICAN (Feb. 27, 2019), [https://www.santafenewmexican.com/news/legislature/bill-banning-coyote-killing-contests-gets-senate-ok/article\\_61cda4f0-f505-5c0d-b367-a139888782a2.html](https://www.santafenewmexican.com/news/legislature/bill-banning-coyote-killing-contests-gets-senate-ok/article_61cda4f0-f505-5c0d-b367-a139888782a2.html) [https://perma.cc/N6VX-6L6L] (accessed Apr. 19, 2020).

<sup>160</sup> Associated Press, *Competitive Killing of Coyotes and Other Predators Prohibited in Arizona*, KNAU (Sept. 5, 2019), <https://www.knau.org/post/competitive-killing-coyotes-and-other-predators-prohibited-arizona> [https://perma.cc/77DQ-93Z2] (accessed Apr. 19, 2020).

<sup>161</sup> ARIZ. ADMIN. CODE § R12-4-303(A)(4)(i) (2019).

any predatory or other fur-bearing animals.<sup>162</sup> The Arizona ban also does not apply to the lawful hunting of animals.<sup>163</sup>

An administrative vote made in December 2019 by the Massachusetts Division of Fisheries & Wildlife, known as MassWildlife, and the Fisheries and Wildlife Board, encouraged the Commonwealth to adopt killing contest bans for many fur-bearing species.<sup>164</sup> MassWildlife also prohibits wanton waste and tightens harvest-reporting requirements for fox and coyote to allow better monitoring and enforcement.<sup>165</sup> Among other significant exceptions,<sup>166</sup> the regulation “does not reduce the opportunity for hunting coyotes or other furbearers.”<sup>167</sup> MassWildlife took on these regulations in response to public concerns over coyote hunting contests.<sup>168</sup> After analyzing the contests and consulting with wildlife professionals, MassWildlife determined that despite the coyotes’ presence, “recent research shows that coyote predation on fawns and adult deer does not impact deer populations.”<sup>169</sup>

Critics of the bans, such as the Sportsmen’s Alliance,<sup>170</sup> argue that killing contests are a form of predator control that benefits farmers and ranchers, and the bans would make it difficult for rural communities to control coyote populations.<sup>171</sup> However, in a letter urging the prohibitions, more than seventy conservation scientists stated that “[t]here is no credible evidence that indiscriminate killing of coyotes or

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<sup>162</sup> *Competitive Killing of Coyotes and Other Predators Prohibited in Arizona*, *supra* note 160.

<sup>163</sup> See ARIZ. ADMIN. CODE § R12-4-304 (2019) (outlining the different ways a person may lawfully take wildlife, such as using centerfire rifles or handguns for bears and other weapons for other animals).

<sup>164</sup> 321 MASS. CODE REGS. § 3.02 (2019) (regulating the different kinds of fur-bearing animals who can be hunted); Kitty Block, *Breaking News: Massachusetts Bans Wildlife Killing Contests*, HUMANE SOC’Y U.S.: A HUMANE WORLD (Dec. 18, 2019), <https://blog.humane-society.org/2019/12/breaking-news-massachusetts-bans-wildlife-killing-contests.html> [<https://perma.cc/D4XA-959Y>] (accessed Apr. 19, 2020); *Mass Wildlife Proposes Regulations to Ban Predator Contests and Prohibit Wanton Waste*, MASS.GOV (July 25, 2019), <https://www.mass.gov/news/masswildlife-proposes-regulations-to-ban-predator-contests-and-prohibit-wanton-waste> [<https://perma.cc/QS37-7UWB>] (accessed Apr. 19, 2020).

<sup>165</sup> *Mass Wildlife Proposes Regulations to Ban Predator Contests and Prohibit Wanton Waste*, *supra* note 164.

<sup>166</sup> 321 MASS. CODE REGS. § 3.02.; MASS. GEN. LAWS ANN. Ch. 131, § 5 (West 2019).

<sup>167</sup> *Mass Wildlife Proposes Regulations to Ban Predator Contests and Prohibit Wanton Waste*, *supra* note 164.

<sup>168</sup> MASSWILDLIFE, SUMMARY OF PROPOSED DRAFT REGULATIONS AT 321 CMR 2.16, 2.17, AND 3.02 CONCERNING PREDATOR AND FURBEARER CONTESTS, THE WASTE OF CERTAIN GAME ANIMALS AND BIRDS, AND HARVEST REPORTING REQUIREMENTS FOR FOX AND COYOTE.

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

<sup>170</sup> *New Mexico Ban on Coyote Hunting Contests Passes Senate*, SPORTSMEN’S ALL. (Feb. 28, 2019), <https://www.sportsmensalliance.org/news/new-mexico-ban-on-coyote-hunting-contests-passes-senate/> [<https://perma.cc/HVT5-JCLQ>] (accessed Apr. 19, 2020).

<sup>171</sup> Boyd & McKay, *supra* note 159.

other predators effectively serves any genuine interest in managing other species.”<sup>172</sup>

Supporters of killing contest bans have been pushing for greater legislative wildlife protections for years.<sup>173</sup> The Center for Biological Diversity supports the bans yet remains concerned over the loopholes that could potentially allow some contests to continue.<sup>174</sup> Over forty states still hold competitions,<sup>175</sup> but New York and New Jersey are considering bans.<sup>176</sup>

### *B. Rulemaking on California’s Drift Gill Net Transition Program*

In August 2019, California crafted new regulations, guided by the Administrative Procedure Act, for the state’s voluntary Drift Gill Net Transition Program, which incentivizes those with drift gill net permits to transition to alternatives.<sup>177</sup> Senate Bill 1017 created the program in September 2018<sup>178</sup> and allows persons to “voluntarily surrender their drift gill net shark and swordfish permit[s] . . . in exchange for a one-time payment.”<sup>179</sup> Environmental groups and state officials have been working to ban gill nets for years because they are prone to accidentally ensnaring many untargeted species.<sup>180</sup> Alternatively, deep-set buoy gear actively targets specific fish at deeper depths and reduces some, but not all, accidental bycatch.<sup>181</sup>

### *C. Budgeting for Southern Resident Orca Recovery*

In 2018, the Governor of Washington “assembled the Southern Resident Orca Task Force . . . to develop a long-term plan for orca re-

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<sup>172</sup> PROJECT COYOTE, STATEMENT IN OPPOSITION TO COYOTE KILLING CONTESTS 1, <http://www.projectcoyote.org/wp-content/uploads/2019/02/SAB-Letter-Against-CKCs-Feb-2019-FINAL.pdf> [<https://perma.cc/JNB6-48SR>] (accessed Apr. 19, 2020).

<sup>173</sup> Boyd & McKay *supra* note 159.

<sup>174</sup> *Arizona Game and Fish Moves to Ban Coyote Killing Contests*, ASSOCIATED PRESS (June 21, 2019), <https://apnews.com/89d17225adce4f2fb85efa84a98f48be> [<https://perma.cc/J3MJ-PQLK>] (accessed Apr. 19, 2020).

<sup>175</sup> Karin Brulliard, *Coyote-Killing Contests Face Growing Outrage, State Bans*, WASH. POST (May 17, 2019, 5:00 AM), <https://www.washingtonpost.com/science/2019/05/17/predator-hunting-contests-face-bans-amid-backlash-several-states/> [<https://perma.cc/7AHY-JW2D>] (accessed Apr. 19, 2020).

<sup>176</sup> Block, *supra* note 149; Pallotta, *supra* note 157.

<sup>177</sup> *Department Rulemaking: Drift Gill Net Transition Program*, CAL. DEP’T FISH & WILDLIFE (Aug. 30, 2019), <https://wildlife.ca.gov/Notices/Regulations/DGN> [<https://perma.cc/AK32-SDU3>] (accessed Apr. 19, 2020).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Peter Arcuni, *Newly Approved Fishing Gear Reduces Ocean Wildlife Entanglements*, KQED (Oct. 1, 2019), <https://www.kqed.org/science/1948311/newly-approved-fishing-gear-reduces-ocean-wildlife-entanglements> [<https://perma.cc/D69Q-7JA6>] (accessed Apr. 19, 2020).

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



covery.”<sup>182</sup> Many of the recommendations the task force made “require increased efforts from the Washington Department of Fish and Wildlife,” which drafted a budget proposal in January 2019 for funding to undertake those efforts.<sup>183</sup> A noteworthy budget item in the legislative request is \$1.2 million for “increased management” of pinnipeds, another variety of sea mammal, in the Columbia River.<sup>184</sup> “Wildlife managers have conducted lethal removal operations of California sea lions in the Columbia River Basin since 2008.”<sup>185</sup> Oregon, Washington, and Idaho also applied for federal authorization to kill sea lions in the Columbia River, which was open to public comment through October 2019.<sup>186</sup>

In opposition to prior efforts to remove sea lions from the Columbia to boost the salmon population, Ashley Lenton, a campaign leader for Sea Shepard, stated: “There are in fact bigger and more detrimental reasons why the fish are in decline and those issues need to be addressed. Sea lions need to be left alone. They’re part of the natural habitat, they’re part of our ecosystem, they’re part of the landscape.”<sup>187</sup>

#### D. Roadkill Salvage Permits

Hunters and People for the Ethical Treatment of Animals (PETA) are unlikely allies in support of permitting the harvest of animals killed in accidental vehicular collisions.<sup>188</sup> Oregon’s law permitting the harvesting of roadkill, passed in 2017, took effect in January 2019.<sup>189</sup> Oregon prohibits the sale of any harvesting-derived products and

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<sup>182</sup> WASH. DEP’T OF FISH & WILDLIFE, SOUTHERN RESIDENT ORCA RECOVERY: WDFW’S 2019–21 LEGISLATIVE REQUEST, (2019), [https://wdfw.wa.gov/sites/default/files/2019-02/2019\\_srkw.pdf](https://wdfw.wa.gov/sites/default/files/2019-02/2019_srkw.pdf) [<https://perma.cc/NZ6D-LTR3>] (accessed Apr. 19, 2020).

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

<sup>184</sup> *Id.*

<sup>185</sup> *WDFW and Partners Apply to Kill Sea Lions in Columbia River and Tributaries*, CHINOOK OBSERVER (June 13, 2019), [https://www.chinookobserver.com/news/local/wdfw-and-partners-apply-to-kill-sea-lions-in-columbia/article\\_e3af7c40-8e22-11e9-a73b-abb26a2c4d32.html](https://www.chinookobserver.com/news/local/wdfw-and-partners-apply-to-kill-sea-lions-in-columbia/article_e3af7c40-8e22-11e9-a73b-abb26a2c4d32.html) [<https://perma.cc/7QMC-Y6BN>] (accessed Apr. 19, 2020).

<sup>186</sup> Monica Samayoa, *Public Can Comment on Killing Sea Lions in the Columbia River*, OPB (Aug. 29, 2019, 5:29 PM), <https://www.opb.org/news/article/sea-lions-salmon-killing-public-comment/> [<https://perma.cc/AD7Y-NJHZ>] (accessed Apr. 19, 2020).

<sup>187</sup> Christine Lyon, *Protector of the Dammed: Sea Shepard Activist Aids Columbia River Sea Lions*, NORTH SHORE NEWS (June 9, 2013), <https://www.nsnews.com/news/protector-of-the-dammed-1.391736> [<https://perma.cc/K3YG-5DC8>] (accessed Apr. 19, 2020).

<sup>188</sup> Baylen Linnekin, *It’s Roadkill Season, and That Tasty Carcass Isn’t Getting Any Deader*, REASON (Apr. 27, 2019, 8:30 AM), <https://reason.com/2019/04/27/its-roadkill-season-and-that-tasty-carcass-isnt-getting-any-deader/> [<https://perma.cc/PT5J-8E52>] (accessed Apr. 19, 2020).

<sup>189</sup> *Id.*; *Roadkill Salvage Permits*, OR. DEP’T OF FISH & WILDLIFE (Jan. 2, 2019), [https://myodfw.com/articles/roadkill-salvage-permits?fbclid=IWAR3q\\_hMeoNWubZuImckw7-jvw1-hiBUXAEIVRzyKvii8xPn-Ve5B0aKwkoc](https://myodfw.com/articles/roadkill-salvage-permits?fbclid=IWAR3q_hMeoNWubZuImckw7-jvw1-hiBUXAEIVRzyKvii8xPn-Ve5B0aKwkoc) [<https://perma.cc/934C-RXCF>] (accessed Apr. 19, 2020).

makes salvaging individuals turn in the recovered animal's head and antlers to an Oregon Department of Fish and Wildlife field office.<sup>190</sup>

California passed a similar law in 2019, oddly crediting technological advances for the practicality of the permitting process and seeking to provide for a similar regulatory framework in California as has been implemented in other states, like Oregon.<sup>191</sup> The California law notes these new salvageable wild game meat programs simplify the reporting and permitting process, minimize direct agency oversight, and generate pertinent wildlife data.<sup>192</sup>

## VI. CALIFORNIA'S RESTRICTIONS ON ANIMAL PRODUCTS IN FASHION

### A. *Fur Prohibitions*

California passed several bills in 2019, aiming to fight animal cruelty and promote animal welfare, including two groundbreaking pieces of legislation related to fur.<sup>193</sup> The first, Assembly Bill 273 (AB 273), the Wildlife Protection Act of 2019, outlaws commercial and recreational fur trapping,<sup>194</sup> making California the first state to impose a widespread ban on trapping animals for their pelts.<sup>195</sup> The second, Assembly Bill 44 (AB 44), was enacted in October 2019 and made California the first state to ban the sale of new animal fur products.<sup>196</sup>

AB 273, enacted in September 2019, prohibits any individual from trapping "any fur-bearing mammal or nongame mammal . . . with any body-gripping trap."<sup>197</sup> The bill also prohibits purchasing, selling, bar-

<sup>190</sup> *Roadkill Salvage Permits*, *supra* note 189.

<sup>191</sup> S.B. 395, Cal. Leg. (Oct. 13, 2019), [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB395&fbclid=IwAR23prhzUgR8MeimBf3Jixv51qeZcqv-FkmtxAZUg7wbsA3ZyXraQF7FJwao](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB395&fbclid=IwAR23prhzUgR8MeimBf3Jixv51qeZcqv-FkmtxAZUg7wbsA3ZyXraQF7FJwao) [<https://perma.cc/2JNJ-D69S>] (accessed Apr. 19, 2020).

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

<sup>193</sup> See Office of Governor Gavin Newsom, *Governor Newsom Signs Package of Bills to Fight Animal Cruelty, Promote Animal Welfare*, Gov.CA (Oct. 12, 2019), <https://www.gov.ca.gov/2019/10/12/governor-newsom-signs-package-of-bills-to-fight-animal-cruelty-promote-animal-welfare/> [<https://perma.cc/V3CG-6YQL>] (accessed Apr. 19, 2020) (describing a package of five animal welfare bills the governor of California passed in October 2019, one of which was a ban on the sale of new fur products); Maria Chiorando, *California Becomes First US State to Ban Fur Trapping*, PLANT BASED NEWS (Sept. 5, 2019), <https://www.plantbasednews.org/culture/-california-first-us-state-ban-fur-trapping> [<https://perma.cc/5AQ8-S95M>] (accessed Apr. 19, 2020) (describing California's fur trapping ban).

<sup>194</sup> Chiorando, *supra* note 193; Andrew Sheeler, *These New California Laws Will Protect Animals in 2020, and Could Change the Way You Shop*, SAC. BEE (Dec. 21, 2019, 6:00 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article237978574.html> [<https://perma.cc/5T4H-QHW8>] (accessed Apr. 19, 2020).

<sup>195</sup> Chiorando, *supra* note 193.

<sup>196</sup> Chelsea Pinkham, *California Becomes the First State to Ban the Sale of New Fur Products*, SONOMA ST. STAR (Oct. 22, 2019), <http://www.sonomastatestar.com/news/2019/10/22/california-becomes-the-first-state-to-ban-the-sale-of-new-fur-products> [<https://perma.cc/Y3K3-QMHG>] (accessed Apr. 19, 2020).

<sup>197</sup> CAL. FISH & GAME CODE § 3003.1(a)(1) (West 2019); Chiorando, *supra* note 193.

tering, or otherwise exchanging trapped animals for profit.<sup>198</sup> However, state-sanctioned trapping to eliminate invasive nutria,<sup>199</sup> or the ability to manage wildlife that injures crops or property, remains legal.<sup>200</sup>

Critics of the ban, such as the state director of the National Trappers Association, argue that the bill “is the latest attempt by urban residents to chip away at hunting and trapping practices common in rural counties.”<sup>201</sup> Trappers also claim that they do not target endangered species, and since the 1998 Proposition 4 ban on steel-jaw and padded leg-hold traps, trappers resort to more ‘humane’ traps.<sup>202</sup>

Once a thriving industry in California and a symbol of the Old West,<sup>203</sup> fur trapping licenses considerably declined in recent years.<sup>204</sup> State legislators already considered this practice a shrinking industry that was “too small and costly to regulate.”<sup>205</sup> Assemblymember Lorena Gonzalez, the bill’s sponsor, stated that the fur trapping trade not only “decimate[s] our increasingly vulnerable wildlife populations, running this program doesn’t even make fiscal policy sense.”<sup>206</sup>

A month after the successful passage of AB 273, California took a further step in curtailing the fur industry by enacting AB 44. Sponsored by Assemblymember Laura Friedman, AB 44 implements a statewide prohibition on manufacturing, selling, offering, displaying, trading, donating, or otherwise distributing any fur product in the state.<sup>207</sup> According to Friedman, many wild animals raised for fur spend their lives confined to small cages before killing the animal in cruel ways to preserve their fur.<sup>208</sup>

The prohibition applies to any “fur product” used in:

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<sup>198</sup> CAL. FISH & GAME CODE § 3003.1(a)(2).

<sup>199</sup> Sheeler, *supra* note 194.

<sup>200</sup> Assemblywoman Lorena Gonzalez Dist. 80, *Lorena Gonzalez’s Statewide Ban on Commercial Fur Trapping Passes California Assembly*, A80 (Apr. 25, 2019), <https://a80.asmdc.org/press-releases/lorena-gonzalezs-statewide-ban-commercial-fur-trapping-passes-california-assembly> [https://perma.cc/K5NQ-AU9X] (accessed Apr. 19, 2020).

<sup>201</sup> Paul Rogers, *Bill May Ban Fur Trapping in State*, DAILY DEMOCRAT (updated Jan. 28, 2019, 8:59 AM), <https://www.dailydemocrat.com/2019/01/28/bill-may-ban-fur-trapping-in-state/> [https://perma.cc/G8J7-REJF] (accessed Apr. 19, 2020).

<sup>202</sup> *Id.*

<sup>203</sup> Adam Beam, *California Bans Fur Trapping for Recreation, Commerce*, ABC NEWS (Sept. 4, 2019, 4:45 PM), <https://abcnews.go.com/Lifestyle/wireStory/california-bans-fur-trapping-recreation-commerce-65396940> [https://perma.cc/ZD8V-YEG7] (accessed Apr. 19, 2020).

<sup>204</sup> Chiorando, *supra* note 193.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*; Carly Day, *California Fur Trapping Ban Passes Senate Committee!*, LADY FREETHINKER (June 14, 2019), <https://ladyfreethinker.org/california-fur-trapping-ban-passes-senate-committee/> [https://perma.cc/EAD8-YF48] (accessed Apr. 19, 2020).

<sup>207</sup> Office of Governor Gavin Newsom, *supra* note 193.

<sup>208</sup> Phil Willon & Sonja Sharp, *California Could Soon Ban Sale of New Fur Products Under Bill Sent to Governor*, L.A. TIMES (Sept. 11, 2019, 12:08 PM), <https://www.latimes.com/california/story/2019-09-11/fur-sale-ban-california-passes-legislature> [https://perma.cc/Z5WX-ZEUR] (accessed Apr. 19, 2020).

[A]ny article of clothing . . . or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys or trinkets, and home accessories and decor that is made in whole or in part of fur.<sup>209</sup>

However, among some of AB 44's exemptions, the law does not prohibit selling second-hand or used fur products, leather goods, cowhide, "deerskin, sheepskin, or goatskin with hair attached," and taxidermy products.<sup>210</sup> Additionally, AB 44 provides exemptions for religious or Native American purposes.<sup>211</sup> Nevertheless, individuals who sell new fur products and violate the prohibitions outlined in AB 44 may be subject to civil penalties ranging from \$500 for the first violation to \$1,000 for repeated violations.<sup>212</sup> Each fur product will constitute a separate violation.<sup>213</sup> AB 44 becomes effective in January 2023.<sup>214</sup>

Before the statewide ban, the cities of Los Angeles, San Francisco, Berkeley, and West Hollywood already prohibited fur sales, with Los Angeles becoming the largest city in the United States to ban the sale, manufacture, or trade of most fur products.<sup>215</sup> The statewide ban on new fur product sales received strong support from animal advocacy groups such as PETA.<sup>216</sup> In contrast, vigorous opposition came from fur product makers, retailers, and commerce organizations.<sup>217</sup> Keith Kaplan, a representative for the Fur Information Council of America and a major critic of the law, argues that the ban harms well-paid workers and creates a domino effect that will eventually ban other products, like "wool blankets and silk sheets—and meat."<sup>218</sup>

On the other hand, supporters pushed for AB 44's passage for months and continue to hope this will be 'the beginning of the end' for the fur industry.<sup>219</sup> Julie Massa, Wild Animal Project Manager at In Defense of Animals, believes that because California is home to the world's fifth-largest economy, this groundbreaking legislation will influence national and international businesses to consider more synthetic materials and "encourage other states and countries to follow

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<sup>209</sup> CAL. FISH & GAME CODE § 2023(a)(2)(A).

<sup>210</sup> CAL. FISH & GAME CODE § 2023(a)(2)(B).

<sup>211</sup> CAL. FISH & GAME CODE § 2023(c).

<sup>212</sup> CAL. FISH & GAME CODE § 2023(e).

<sup>213</sup> CAL. FISH & GAME CODE § 2023(e).

<sup>214</sup> CAL. FISH & GAME CODE § 2023(g).

<sup>215</sup> Willon & Sharp, *supra* note 208.

<sup>216</sup> Casey Watson, *Is California Putting Wisconsin's Fur Industry at Risk?*, SCI. 101 (updated Jan. 2, 2020), <https://www.science101.com/is-california-putting-wisconsin-fur-industry-at-risk/> [<https://perma.cc/5SNG-BLYS>] (accessed Apr. 19, 2020).

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

<sup>218</sup> Dustin Gardner, *Newsom Signs Historic Ban on Sale of Fur Clothing*, S.F. CHRON. (Oct. 12, 2019), <https://www.sfchronicle.com/politics/article/California-is-first-state-to-ban-the-sale-of-fur-14517156.php> [<https://perma.cc/7GP9-ZSC5>] (accessed Apr. 19, 2020); Watson, *supra* note 216.

<sup>219</sup> Pinkham, *supra* note 196.

suit.”<sup>220</sup> Animal rights advocates are hopeful that New York, Hawaii, Minnesota, and Ohio will push ahead with bans of their own.<sup>221</sup>

### B. *Animal Skin in Products and Fashion*

Although California continued its trend as a leader of animal rights and welfare laws, the Eastern District Court of California blocked a significant legislative victory that was supposed to reinstitute a ban on alligator and crocodile products.<sup>222</sup> California Penal Code Section 653o would make it unlawful to import or sell for commercial purposes “the dead body, or any part or product . . . of a crocodile or alligator.”<sup>223</sup> Section 653o also intends to punish individuals unlawfully importing crocodile or alligator products with misdemeanor penalties that include fines ranging from \$1,000 to \$5,000 and up to six months imprisonment.<sup>224</sup>

The State of Louisiana, and a syndicate of businesses from the exotic skin industry that claims to face “a wide range of irreparable harms” from the ban, filed lawsuits against California after unsuccessfully urging state legislators to introduce bills to stop or delay Section 653o.<sup>225</sup> The parties agreed to a court-ordered temporary halt on the ban, while pending litigation presents the potential for a more permanent ruling.<sup>226</sup>

According to the Louisiana Wildlife and Fisheries Secretary Jack Montoucet, California accounts for 30% of the worldwide alligator market, and the law could cripple the multimillion-dollar industry.<sup>227</sup> If Louisiana loses this market, Montoucet argues that hunters and farmers in his state “are going to be in trouble [because] California is just the first of the dominoes to fall.”<sup>228</sup>

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

<sup>221</sup> Willon & Sharp, *supra* note 208.

<sup>222</sup> Stephanie A. Sheridan & Meegan Brooks, *See You Even Later, Alligator—Judge Pauses California Ban on Exotic Skin Sales*, MONDAQ (Jan. 3, 2020), <http://www.mondaq.com/unitedstates/x/879904/Product+Liability+Safety/See+You+Even+Later+Alligator+Judge+Pauses+California+Ban+on+Exotic+Skin+Sales> [https://perma.cc/WE46-MPR4] (accessed Apr. 19, 2020).

<sup>223</sup> CAL. PENAL CODE § 653o(b).

<sup>224</sup> CAL. PENAL CODE § 653o(b)(2)–(d).

<sup>225</sup> Andrew Sheeler, *California’s Ban on Sales of Alligator Boots Drawing a Lawsuit from Louisiana*, SAC. BEE, (updated Dec. 17, 2019, 12:40 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article238282048.html> [https://perma.cc/2KQR-XHFN] (accessed Apr. 19, 2020); Sheridan & Brooks, *supra* note 222.

<sup>226</sup> Evan Symon, *California’s Ban on Alligator and Crocodile Product Sales is Blocked by Louisiana in Lawsuit*, CAL. GLOBE (Dec. 30, 2019, 2:49 PM), <https://californiaglobe.com/section-2/californias-ban-on-alligator-and-crocodile-product-sales-is-blocked-by-louisiana-in-lawsuit/> [https://perma.cc/76HS-NTA9] (accessed Apr. 19, 2020).

<sup>227</sup> Sheeler, *supra* note 225; Tristan Baurick, *As California Bans Gator Skin Sales, Louisiana Sues to Keep Access to That Big Market*, NOLA.COM (Dec. 11, 2019, 1:15 PM), [https://www.nola.com/news/environment/article\\_9d26173e-1c3e-11ea-98c7-e3d0033c9467.html](https://www.nola.com/news/environment/article_9d26173e-1c3e-11ea-98c7-e3d0033c9467.html) [https://perma.cc/2WGG-2YZ4] (accessed Apr. 19, 2020).

<sup>228</sup> Baurick, *supra* note 227.

California's previous legislation had already technically "banned importing alligator products, such as boots, coats, and bags, for decades."<sup>229</sup> Nevertheless, since the legislation passed in 1970, the exotic skins industry diligently fought against it,<sup>230</sup> prompting state legislators to lift the ban by establishing and extending sunset clauses over the years to allow the continued sale of exotic skin products.<sup>231</sup> However, no new bills to carry forward the exemptions successfully passed in 2019, eventually allowing the sunset clause to expire January 1, 2020,<sup>232</sup> until litigation on this issue halts. Two bills are currently in committee that could potentially pass before the court lifts the temporary restraining orders.<sup>233</sup> The first bill, Assembly Bill 719, would not completely ban the sale of crocodile and alligator skin products.<sup>234</sup> Instead, it amends Section 6530 to require industry manufacturers to submit proposals to the Director of Fish and Wildlife regarding technology that could track the source of origin of skin hides.<sup>235</sup> The proposal also requires the "humane treatment of farmed crocodiles and alligators," prohibiting companies that fail to use such tracking systems from importing or selling products after March 30, 2022.<sup>236</sup> The other pending bill, Assembly Bill 1561, would simply delay the ban until January 1, 2021.<sup>237</sup>

Despite the District Court blocking the ban on alligator and crocodile products, California Governor Gavin Newsom signed an additional ban on the sale and import of other exotic skin species on October 12, 2019—the same day he signed the ban on new fur products.<sup>238</sup> Assembly Bill 1260 is scheduled to take effect on January 1, 2022, and will protect threatened species, such as caimans, hippopotamuses, iguanas, skinks, and other lizard varieties.<sup>239</sup> Animal rights organizations saw the passage of this bill as one of many other victories signed into law by Governor Newsom in 2019.<sup>240</sup>

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<sup>229</sup> Sheeler, *supra* note 225.

<sup>230</sup> Charlotte Pointing, *California Passes Historic Ban on Alligator Skin Sales*, LIVE KINDLY (updated Oct. 12, 2019), <https://www.livekindly.co/california-historic-ban-alligator-skin-sales/> [https://perma.cc/QR9E-Z2AU] (accessed Apr. 19, 2020).

<sup>231</sup> LA. ALLIGATOR ADVISORY COUNCIL, 2017-2018 ANNUAL REPORT 4 (2018).

<sup>232</sup> Sheeler, *supra* note 225.

<sup>233</sup> Sheridan & Brooks, *supra* note 222.

<sup>234</sup> Assemb. B. 719, Cal. Leg., 2019-2020 Reg. Sess. (Cal. 2019).

<sup>235</sup> Assemb. B. 719.

<sup>236</sup> Assemb. B. 719.

<sup>237</sup> Assemb. B. 1561, Cal. Leg., 2019-2020 Reg. Sess. (Cal. 2019).

<sup>238</sup> Sheridan & Brooks, *supra* note 222.

<sup>239</sup> Assemb. B. 1260, Cal. Leg., 2019-2020 Leg. Sess. (Cal. 2019).

<sup>240</sup> *Historic Day for Animals—California Passes Multiple Animal Protection Laws!*, IN DEF. ANIMALS (Oct. 12, 2019), <https://www.idausa.org/campaign/wild-animals-and-habitats/latest-news/breaking-historic-day-for-animals-california-passes-multiple-animals-protection-laws/> [https://perma.cc/A4NV-VEPC] (accessed Apr. 19, 2020).

## VII. COURTROOM ANIMAL ADVOCATE PROGRAMS

Franky, a brutally killed Boston terrier-pug mix, is the namesake of Maine's Legislative Document 1442 (Franky's Law), An Act to Provide for Court-appointed Advocates for Justice in Animal Cruelty Cases.<sup>241</sup> Proposed in April 2019,<sup>242</sup> and based on a similar law in Connecticut called Desmond's Law,<sup>243</sup> Franky's Law allows judges to appoint volunteer lawyers and law students, such as those from the University of Maine School of Law, to participate in court proceedings related to animal cruelty matters.<sup>244</sup>

A proposal for a Courtroom Animal Advocacy Program was also introduced in New Jersey's legislature in January 2019 with S-3322 and A-4840.<sup>245</sup> These were also modeled after Desmond's Law in Connecticut.<sup>246</sup> Additionally, ALDF keeps model legislation for a Courtroom Animal Advocate Program freely available on their website.<sup>247</sup>

## VIII. EFFORTS TO CURB VIOLENCE TOWARD ANIMALS

### A. *Bestiality Finally a Crime in Kentucky*

Kentucky finally joined the majority of states that outlaw sexual contact between a person and an animal.<sup>248</sup> Senate Bill 67 (SB 67) defines "sexual contact" with any animal as "any act committed between a person and an animal for the purpose of sexual arousal, sexual gratification, abuse, or financial gain."<sup>249</sup> Classification of such sexual crimes against an animal will be a Class D felony conviction.<sup>250</sup> Violators must surrender the custody of the abused animal, as well as any other animals under their control, will no longer be able to own or possess any animals, and will be prohibited from residing with or working or volunteering in places "where the person has unsupervised access to

<sup>241</sup> L.D. 1442, 129th Leg., First Reg. Sess. (Me. 2019); Judy Harrison, *'Franky's Law' Would Give Animals Legal Advocates in Cruelty Cases*, BANGOR DAILY NEWS (May 1, 2019), <https://www.mainepublic.org/post/franky-s-law-would-give-animals-legal-advocates-cruelty-cases> [https://perma.cc/7PRS-UCBK] (accessed Apr. 19, 2020).

<sup>242</sup> L.D. 1442.

<sup>243</sup> CONN. GEN. STAT. 54-86n (2016); Harrison, *supra* note 241.

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

<sup>245</sup> S. 3322, 218th Leg. (N.J. 2019); Assemb. B. 4840, 218th Leg., Prior Sess. (N.J. 2019); .

<sup>246</sup> S. 3322; Assemb. B. 4840.

<sup>247</sup> ANIMAL LEGAL DEF. FUND, Animal Legal Defense Fund Model Legislation: Courtroom Animal Advocate Program (CAAP) Law 1 (2019), <https://aldf.org/wp-content/uploads/2019/08/ALDF-Model-CAAP-Law-2019.pdf> [https://perma.cc/2TJX-BC79] (accessed Apr. 19, 2020).

<sup>248</sup> Billy Kobin, *Kentucky Governor Signs Bill Outlawing Sex Between People and Animals*, LOUISVILLE COURIER J. (updated Mar. 27, 2019, 6:06 PM), <https://www.jsonline.com/story/news/nation/2019/03/27/sex-animals-bestiality-bill-signed-kentucky/3294087002/> [https://perma.cc/MT8Z-RASE] (accessed Apr. 19, 2019).

<sup>249</sup> KY. REV. STAT. ANN. § 525.137 (West 2019).

<sup>250</sup> KY. REV. STAT. ANN. § 525.137(3).

animals” for at least five years after completing their sentence.<sup>251</sup> Additionally, perpetrators must attend a “treatment program or obtain psychiatric or psychological counseling” at their own expense.<sup>252</sup> However, SB 67 has certain exceptions, such as accepted veterinary practices, artificial insemination for reproductive purposes, and other accepted husbandry and breeding practices.<sup>253</sup>

State Senator Julie Raque Adams, SB 67’s sponsor, believes that the law will protect women and children from violence because “[i]t is proven beyond a doubt that persons who sexually assault animals are very likely to turn their violent tendencies toward women and children.”<sup>254</sup> Adams was also motivated to pass SB 67 after uncovering websites that sought to “match people in Kentucky who [were] interested in bestiality” without those individuals “getting into trouble with the law.”<sup>255</sup> HSUS believes that SB 67 is strong due to the penalties imposed on violators.<sup>256</sup> Other supporters of SB 67 hope that the few remaining states without any bestiality laws will pass similar laws, or that those with laws in place will strengthen theirs.<sup>257</sup> Wyoming, New Mexico, West Virginia, Hawaii, and the District of Columbia are the remaining jurisdictions in the United States without any laws against bestiality.<sup>258</sup>

### B. *Animals in Domestic Violence Disputes*

Rhode Island took a significant step in protecting animals from abuse by passing a new law expanding the family court’s jurisdiction, allowing the court to enter protective orders in domestic violence situations and “provid[ing] for the safety and welfare of household pets.”<sup>259</sup> Senate Bill 225 (SB 225) amends Chapter 15 of the Domestic Abuse Prevention law to include “further providing in the order for the safety and welfare of all household animals and pets” after “ordering a defendant to vacate the household immediately.”<sup>260</sup> Senate President

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<sup>251</sup> KY. REV. STAT. ANN. § 525.137(5)(a)-(b).

<sup>252</sup> KY. REV. STAT. ANN. § 525.137(5)(c).

<sup>253</sup> KY. REV. STAT. ANN. § 525.137(4).

<sup>254</sup> Kobin, *supra* note 248.

<sup>255</sup> Jack Brammer, *Kentucky Legislature Makes Sex with Animals Illegal to Combat Animal Porn Industry*, LEXINGTON HERALD LEADER (updated Mar. 22, 2019, 11:14 AM), <https://www.kentucky.com/news/politics-government/article228182764.html> [<https://perma.cc/77X5-3ZWQ>] (accessed Apr. 19, 2020).

<sup>256</sup> Kitty Block, *Kentucky Becomes 46th State to Ban Animal Sexual Abuse*, HUMANE SOC’Y U.S.: A HUMANE WORLD (Mar. 28, 2019), <https://blog.humanesociety.org/2019/03/kentucky-becomes-46th-state-to-ban-animal-sexual-abuse.html> [<https://perma.cc/GG8W-AM9Z>] (accessed Apr. 19, 2020).

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

<sup>258</sup> Kobin, *supra* note 248.

<sup>259</sup> *Domestic Violence Protective Orders Can Now Include Pets*, CBS Bos., (July 6, 2019, 5:22 PM), <https://boston.cbslocal.com/2019/07/06/domestic-violence-protective-orders-can-now-include-pets/> [<https://perma.cc/BUN9-Z5CK>] (accessed Apr. 19, 2020).

<sup>260</sup> S. 0225, Gen. Assemb. (R.I. 2019); H. 5023, Gen. Assemb. (R.I. 2019); 15 R.I. GEN. LAWS ANN. § 15-15-3 (West 2019).



Dominick Ruggiero, who co-introduced the bill, stated that the law addresses the “strong correlation between domestic abuse and animal abuse” and ensures the protection of pets under those situations.<sup>261</sup> Before the passage of SB 225, when a victim filed a restraining order in family court, the judge could “only rule on the custody of a shared pet once [a] divorce [was] finalized,” potentially leaving pets in an abusive home for months.<sup>262</sup> Massachusetts and Connecticut are among the other states that already include such protections.<sup>263</sup>

### C. Animal Possession Bans for Animal Abusers

In May 2019, Colorado passed House Bill 1092, which amends the state’s animal cruelty statute to include an animal possession ban for convicted animal abusers for three to five years following conviction.<sup>264</sup> Possession bans are an essential trend in animal protection law because the recidivism rate for certain types of animal abuse can be very high.<sup>265</sup>

Indiana passed similar legislation in April 2019 with Senate Enrolled Act 474, which states, “[a]s a condition of parole, the parole board shall prohibit a person convicted of an animal abuse offense . . . from owning, harboring, or training a companion animal.”<sup>266</sup> Texas introduced similar legislation in 2019 under Senate Bill 804 and House Bill 2012, however, neither piece of legislation advanced.<sup>267</sup>

Massachusetts also held a hearing for House Bill 3772, a similar animal possession ban for animal abusers, in September 2019.<sup>268</sup> The Animal Cruelty Task Force highlighted the value of placing reasonable restrictions on owning or accessing animals for those with animal cruelty convictions.<sup>269</sup> The Massachusetts Society for the Prevention of

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<sup>261</sup> CBS Bos., *supra* note 259.

<sup>262</sup> Julianne Lima & Jacqui Gomersall, *Bill Aimed at Protecting Pets in Domestic Abuse Situations*, WPRI.COM (updated June 17, 2019 6:55 PM), <https://www.wpri.com/news/local-news/providence/bill-aimed-at-protecting-pets-in-domestic-abuse-situations/> [<https://perma.cc/3DPV-RRWU>] (accessed Apr. 19, 2020).

<sup>263</sup> CBS Bos., *supra* note 259.

<sup>264</sup> H.B. 19-1092, 72nd Gen. Assemb., First Reg. Sess. (Colo. 2019).

<sup>265</sup> Nicole Pallotta, *Colorado Passes Animal Possession Ban for Convicted Animal Abusers*, ANIMAL LEGAL DEF. FUND (Aug. 29, 2019), <https://aldf.org/article/colorado-passes-animal-possession-ban-for-convicted-animal-abusers/> [<https://perma.cc/6H3C-377K>] (accessed Apr. 19, 2020).

<sup>266</sup> S.B. 474, 121st Gen. Assemb., First Reg. Sess. (Ind. 2019).

<sup>267</sup> *Animal Possession Ban*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/project/animal-possession-ban-texas-sb-804-and-hb-2012/> [<https://perma.cc/EE9K-4M6E>] (accessed Jan. 16, 2020).

<sup>268</sup> H.B. 3772, 191ST Gen. Ct. (Mass. 2019).

<sup>269</sup> S. 2494: *An Act Relative to Protecting Animals from Abusers*, MSPCA ANGELL, [https://www.mspca.org/animal\\_protection/protecting-animals-from-abusers/](https://www.mspca.org/animal_protection/protecting-animals-from-abusers/) [<https://perma.cc/M664-NQDL>] (accessed Apr. 19, 2020). To clarify, a new draft of H.B. 3772, along with two other similar bills, became S. 2494 in 2020. A review of the 2020 updates are beyond the scope of this Review.

Cruelty to Animals—Angell, which supports the bill, raised concerns over some limitations current laws have in the state.<sup>270</sup>

ALDF maintains a model possession ban on its website.<sup>271</sup> Additionally, New Hampshire introduced and debated Senate Bill 77 (SB 77) in 2019, which has similar provisions for restricting animal ownership by convicted animal abusers.<sup>272</sup> However, the bill died on the table in January 2020.<sup>273</sup> SB 77's language originally included:

The court shall prohibit or limit any person convicted of a felony offense of animal cruelty . . . or a misdemeanor or felony offense of bestiality . . . from having future ownership or custody of, or residing with other animals for a minimum of [five] years, and may impose any other reasonable restrictions . . . for the protection of the animals.<sup>274</sup>

#### *D. California's Proposed Animal Cruelty and Violence Intervention Act Of 2019*

In February 2019, the California legislature introduced, and later amended, Senate Bill 580 (SB 580), the Animal Cruelty and Violence Intervention Act of 2019.<sup>275</sup> If passed into law, SB 580 “would delete the requirement that a defendant granted probation complete counseling and would instead require a defendant convicted of specified offenses against animals and granted probation or a suspended sentence to undergo a psychological or psychiatric evaluation” at the defendant's expense.<sup>276</sup> Additionally, SB 580 would require the court “to consider whether to order the defendant to complete a responsible animal owner education course, as specified.”<sup>277</sup>

Senator Scott Wilk, who introduced SB 580, stated, “[t]he link between individuals who abuse animals and those who go on to commit crimes against humans is real. By ensuring that animal abusers receive the mental health assessments needed we will be taking a step forward in breaking that link.”<sup>278</sup>

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<sup>270</sup> *Id.*

<sup>271</sup> *Contact with Animals by Offender Prohibited*, ANIMAL LEGAL DEF. FUND (2019), <https://aldf.org/wp-content/uploads/2018/05/ALDF-Possession-Ban-Model-Law-2019.pdf> [<https://perma.cc/9XY6-TSDR>] (accessed Apr. 19, 2020).

<sup>272</sup> S.B. 77, Reg. Sess. (N.H. 2019).

<sup>273</sup> *Docket of SB77*, GEN. CT. N.H., [http://gencourt.state.nh.us/bill\\_status/Bill\\_docket.aspx?lsr=829&sy=2019&sortoption=&txtsessionyear=2019&txtbillnumber=SB77](http://gencourt.state.nh.us/bill_status/Bill_docket.aspx?lsr=829&sy=2019&sortoption=&txtsessionyear=2019&txtbillnumber=SB77) [<https://perma.cc/S7LJ-NNNF>] (accessed Apr. 19, 2020).

<sup>274</sup> S.B. 77, 166th Gen. Ct. Sess. (N.H. 2019).

<sup>275</sup> S.B. 580, Cal. Leg., 2019-2020, Reg. Sess. (Cal. 2019).

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> The AV Times Staff, *Animal Cruelty and Violence Prevention Act Clears Senate*, ANTELOPE VALLEY TIMES (May 28, 2019), <http://theavtimes.com/2019/05/28/animal-cruelty-and-violence-prevention-act-clears-senate/> [<https://perma.cc/48JY-VX2W>] (accessed Apr. 19, 2020).

## IX. STATE LAW DEVELOPMENTS IN COMPANION ANIMAL WELFARE

### A. *Animal Shelter Prohibited from Providing Research Animals in Louisiana*

In response to an advocacy effort led by People for the Ethical Treatment of Animals (PETA), the legislature of Louisiana introduced a bill in March of 2019 that took effect in August 2019, restricting animal shelters from selling animals for use in research or experimentation.<sup>279</sup> PETA sought to protect houseless dogs and cats from being provided, either alive or dead, by the Companion Animal Alliance (CAA) to Louisiana State University.<sup>280</sup> The CAA claimed on its website some of these animals were adopted to a new home, but instead they were ‘released’ to Louisiana State University School of Veterinary Medicine for use in lethal procedures.<sup>281</sup> Organizations promoting animal welfare and claiming to rehome companion animals must be held accountable and maintain a level of transparency regarding their activities. Public trust in these institutions is vital to the success of animal advocacy. Louisiana taking swift corrective action to adjust the law when a flaw was found is inspiring.

### B. *Criminal Justice Reform in Florida*

In May 2019, Florida passed House Bill 7125 (HB 7125), which was approved by the Governor in June.<sup>282</sup> HB 7125 is the result of long-discussed criminal justice reform.<sup>283</sup> While HB 7125 has many other components, it provides greater, but not absolute, freedom for veterinarians to report suspected animal abuse they witness at work.<sup>284</sup> HB 7125 states that “[i]n any criminal action or situation where a veterinarian suspects a criminal violation . . . a veterinarian may, without notice to or authorization from the client, report the vio-

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<sup>279</sup> H.B. 454, Reg. Sess. (Cal. 2019); *HB 454 Bill Info*, LA ST. LEGIS., <http://www.legis.la.gov/legis/BillInfo.aspx?s=19RS&b=HB454&sbi=Y> [https://perma.cc/AYP5-V3EM] (accessed Apr. 19, 2020); *Louisiana Shelters Face Limits on Providing Research Animals*, ASSOCIATED PRESS (June 29, 2019), <https://apnews.com/aec4fa59087b49d7a1a2ccaed00fed7> [https://perma.cc/4K77-DFQL] (accessed Apr. 19, 2020).

<sup>280</sup> *Victory! Historic Law Protects Homeless Dogs and Cats from Labs*, PETA (updated June 30, 2019), <https://www.peta.org/action/action-alerts/lsu-vet-school-buys-dogs-from-shelter/> [https://perma.cc/K258-CYFZ] (accessed Apr. 19, 2020).

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

<sup>282</sup> H.B. 7125, 2019 Leg., Reg. Sess. (Fla. 2019); *CS/HB 7125: Administration of Justice*, FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2019/07125> [https://perma.cc/QFG6-C85P] (accessed Apr. 19, 2020).

<sup>283</sup> Press Release, ACLU Fla., Florida Campaign for the Criminal Justice Reform Calls for Systemic and Comprehensive Reform, (May 3, 2019), <https://www.aclufla.org/en/press-releases/florida-campaign-criminal-justice-reform-calls-systemic-and-comprehensive-reform> [https://perma.cc/J3ZR-MSNV] (accessed Apr. 19, 2020).

<sup>284</sup> Meryl Kornfield, *Bill Would Allow Vets to Report Suspected Animal Abuse*, ASSOCIATED PRESS (May 3, 2019), <https://apnews.com/481d8a4a659647d5bb3a034ffcfafa15> [https://perma.cc/D9KU-3MHF] (accessed Apr. 19, 2020).

lation to a law enforcement officer.”<sup>285</sup> However, veterinarians working at agricultural or commercial food-producing animal operations “must provide notice to the client or the client’s legal representative before reporting the suspected violation.”<sup>286</sup>

Regarding the exemption for farm animals, Diana Ferguson, who serves as the legislative chair of the Florida Bar Animal Law Section, stated that the bill was a compromise between lobbying efforts.<sup>287</sup> Ferguson further stated, “[o]n a legitimate, bona fide agriculture operation the owner operator might not know if something bad is happening, and they would want notice, so that they could address it immediately.”<sup>288</sup> However, it is foreseeable that an owner or manager might be well aware of, and either permit or encourage, continuing animal welfare concerns such as abuse. This requirement to notify agricultural clients before reporting violations could place concerned veterinarians who would like to report suspected animal abuse in a difficult and undesirable position.<sup>289</sup> HB 7125 leaves Kentucky as the only state at the end of 2019 that prohibits veterinarians from reporting suspected animal abuse.<sup>290</sup>

### C. *Banishing Breed-Specific Bans*

Effective January 2020, Washington’s Breed-Based Dog Regulations were signed into law in 2019. House Bill 1026 (HB 1026) states:

A number of local jurisdictions have enacted ordinances prohibiting or placing additional restrictions on specific breeds of dogs. While the legislature recognizes that local jurisdictions have a valid public safety interest in protecting citizens from dog attacks, the legislature finds that a dog’s breed is not inherently indicative of whether or not a dog is dangerous and that the criteria for determining whether or not a dog is dangerous or potentially dangerous should be focused on the dog’s behavior.<sup>291</sup>

Furthermore, HB 1026 addresses how “breed-specific ordinances fail to address the factors that cause dogs to become aggressive and place an undue hardship on responsible dog owners who provide proper socialization and training.”<sup>292</sup> HB 1026 aims to encourage Washington’s municipalities to implement more effective laws that fo-

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<sup>285</sup> H.B. 7125.

<sup>286</sup> H.B. 7125.

<sup>287</sup> Kornfield, *supra* note 284.

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

<sup>289</sup> See Roomy Khan, *Whistleblower: Warrior, Saboteur or Snitch?*, FORBES (July 5, 2018, 1:03 PM), <https://www.forbes.com/sites/roomykhan/2018/07/05/whistleblower-warrior-saboteur-or-snitch/> [<https://perma.cc/RW48-ENT7>] (accessed Apr. 19, 2020) (discussing, generally, some of the negative consequences of whistleblowing).

<sup>290</sup> ANIMAL LEGAL DEF. FUND, ANIMAL PROTECTION U.S. STATE LAWS RANKING REPORT 18–19 (2019), <https://aldf.org/wp-content/uploads/2020/01/2019-Animal-Protection-laws-Ranking-report.pdf> [<https://perma.cc/E4Z6-XYSV>] (accessed Apr. 19, 2020).

<sup>291</sup> H.B. 1026, 66th Leg., Reg. Sess. (Wash. 2019).

<sup>292</sup> H.B. 1026.

cus on a dog's behavior rather than breed to "fairly control dangerous dogs and enhance public safety."<sup>293</sup>

In January 2019, Massachusetts proposed House Bill 1038, An Act to Prohibit Housing Discrimination Against Responsible Dog Owners.<sup>294</sup> The Act states that any lease or rental agreement provisions "relating to the keeping of pets shall be deemed to be against public policy and void if the lease or other rental agreement prohibits the keeping of certain types of dogs based on breed, size or weight."<sup>295</sup> Furthermore, insurance companies that offer renters or homeowners insurance cannot discriminate by imposing higher premiums or rates on individuals that own a specific breed of dog on the insured property.<sup>296</sup>

Breed-specific legislation is a major government expense that yields dubious results. The Best Friends Animal Society estimated that one county in Maryland incurred more than \$1.3 million in annual expenses resulting from a breed-specific ban.<sup>297</sup> Some suggest that spending government funds would go further as either a tax refund for low-income taxpayers or in pursuit of convicting animal abusers.<sup>298</sup>

#### D. Retirement Plans for Law Enforcement Animals

In November 2019, Texas amended its constitution with Proposition 10 (Prop 10) to allow law enforcement animals, such as dogs or horses, to be transferred to "the animal's handler or another qualified caretaker if the transfer is in the animal's best interest."<sup>299</sup> Over 93% of Texans voted yes on the constitutional amendment.<sup>300</sup> Dogs used in law enforcement programs often go home with their handlers and be-

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<sup>293</sup> H.B. 1026.

<sup>294</sup> H.B. 1038, 191st Gen. Ct., Reg. Sess. (Mass. 2019).

<sup>295</sup> H.B. 1038.

<sup>296</sup> H.B. 1038.

<sup>297</sup> Andrew Michaels, *Dog Owner's Group Pushing to End Prince George's County Pit Bull Ownership Ban*, BALTIMORE SUN (Sept. 2, 2015), <https://www.baltimoresun.com/maryland/laurel/ph-ll-dog-breed-ban-0903-20150901-story.html> [<https://perma.cc/8H7W-QL4U>] (accessed Apr. 19, 2020).

<sup>298</sup> See, e.g., Elaine Maag, *A Simpler and More Generous Tax Credit for Low-Income Workers and Caregivers*, FORBES (July 2, 2019, 11:40 AM), <https://www.forbes.com/sites/elainemaag/2019/07/02/a-simpler-and-more-generous-tax-credit-for-low-income-workers-and-caregivers/> [<https://perma.cc/5YTN-XTUW>] (accessed Apr. 19, 2020) (discussing views on the expansion of the Earned Income Tax Credit); *Animal Abuse*, NAT'L DIST. ATT'Y ASS'N, <https://ndaa.org/programs/animal-abuse/> [<https://perma.cc/B3QP-SA7W>] (accessed Apr. 19, 2020) (suggesting the value and benefit of these possible alternative uses of government funding either for more resources for effective law enforcement of animal abuse crimes or of tax refunds for low-income workers and caregivers).

<sup>299</sup> *Texas Proposition 10, Transfer of Law Enforcement Animals Amendment (2019)*, BALLOTPEdia, [https://ballotpedia.org/Texas\\_Proposition\\_10,\\_Transfer\\_of\\_Care\\_of\\_Law\\_Enforcement\\_Animals\\_Amendment\\_\(2019\)](https://ballotpedia.org/Texas_Proposition_10,_Transfer_of_Care_of_Law_Enforcement_Animals_Amendment_(2019)) [<https://perma.cc/4EPU-S365>] (accessed Apr. 19, 2020).

<sup>300</sup> *Id.*

come an important part of the family unit.<sup>301</sup> Supporters asserted that Prop 10 would “honor the bond between a law enforcement animal and [their] handler by allowing these animals to retire in the homes where they live.”<sup>302</sup> Prop 10 allows law enforcement agencies to retire these hard-working animals to “the homes they have been in their entire lives” to ensure the humane care for these animals with little or no required fee.<sup>303</sup>

*E. “Cats of New York: Show Me Your Claws!”<sup>304</sup>*

As of 2018, six states have introduced legislation to limit or criminalize the declawing of cats.<sup>305</sup> Cat declawing is illegal in many other countries but remains a common practice in the United States.<sup>306</sup> In 2019, New York became the first state to ban the declawing of cats, unless it addresses a legitimate medical condition, with Senate Bill S5532B.<sup>307</sup> In regards to the historic occasion, Assemblymember Linda Rosenthal remarked that New York became the first state “to ban the barbaric practice of cat declawing . . . . [i]t’s a catastrophic day for the felines of New York and the many people who love them . . . . [G]iven the availability of low-cost and pain-free alternatives, it’s totally unnecessary, most often performed to protect people’s furniture from cats’ scratching.”<sup>308</sup> Additionally, Rosenthal expects “other states to quickly follow suit.”<sup>309</sup>

Dr. Jennifer Conrad, founder of the Paw Project, remarked, “New York is now a model for other states, including Massachusetts, which

<sup>301</sup> See HOUSE RESEARCH ORGANIZATION, HJR 96 BILL ANALYSIS 1–2 (2019) (discussing the confusion caused by this transfer since state law “generally prohibits a state entity from transferring valuable property to a private person without payment”).

<sup>302</sup> *Id.*

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

<sup>304</sup> David Klepper, *New York Poised to Become First State to Ban Cat Declawing*, ASSOCIATED PRESS (June 4, 2019), <https://apnews.com/34c581f6a2114a8399a2a187ab8163f6> [<https://perma.cc/UPJ2-L76D>] (accessed Apr. 19, 2020) (quoting Assemblymember Linda Rosenthal).

<sup>305</sup> *Welfare Implications of Declawing of Domestic Cats*, AM. VETERINARY MED. ASS’N (July 23, 2019), <https://www.avma.org/resources-tools/literature-reviews/welfare-implications-declawing-domestic-cats> [<https://perma.cc/4JQJ-9KSN>] (accessed Apr. 19, 2020).

<sup>306</sup> Nicole Pallotta, *New York Becomes First State to Ban Cat Declawing*, ANIMAL LEGAL DEF. FUND (Oct. 1, 2019), <https://aldf.org/article/new-york-becomes-first-state-to-ban-cat-declawing/> [<https://perma.cc/9KNR-HV7W>] (accessed Apr. 19, 2020).

<sup>307</sup> S.B. 5532, Reg. Sess. (N.Y. 2019); Pallotta, *supra* note 306; Dani Matias, *Cats Can Keep Their Claws; New York Bans Declawing*, NPR (July 23, 2019), [https://www.npr.org/2019/07/23/744436827/cats-can-keep-their-claws-new-york-bans-declawing?utm\\_medium=social&utm\\_term=nprnews&utm\\_source=facebook.com&utm\\_campaign=npr&fbclid=IWAR1Ugk62Hg55ORy0qh8NJdxeTCbKbato\\_D\\_QqVQeJ2mSFpDHZBUV-GeCw6I](https://www.npr.org/2019/07/23/744436827/cats-can-keep-their-claws-new-york-bans-declawing?utm_medium=social&utm_term=nprnews&utm_source=facebook.com&utm_campaign=npr&fbclid=IWAR1Ugk62Hg55ORy0qh8NJdxeTCbKbato_D_QqVQeJ2mSFpDHZBUV-GeCw6I) [<https://perma.cc/ASY8-QW2J>] (accessed Apr. 19, 2020).

<sup>308</sup> Assemblymember Linda B. Rosenthal Assembly Dist. 67, *Assemblymember Linda B. Rosenthal Announces Her First-in-the-Nation Cat Declawing Ban Enacted*, NY ASSEMBLY.GOV (July 22, 2019), <https://nyassembly.gov/mem/Linda-B-Rosenthal/story/88289> [<https://perma.cc/JU3J-DE79>] (accessed Apr. 19, 2020).

<sup>309</sup> *Id.*

is holding its hearing on similar cat protection legislation today.”<sup>310</sup> The punishment for violation of the new law is a “civil penalty not to exceed \$1,000.”<sup>311</sup> In 2019, California introduced Assembly Bill 1230, which would also restrict the practice, except for therapeutic purposes.<sup>312</sup>

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<sup>310</sup> *Id.*

<sup>311</sup> N.Y. Agric. & Mkts. Law § 381 (LexisNexis 2019).

<sup>312</sup> Assemb. B. 1230, Cal. Leg., 2019–2020, Reg. Sess. (Cal. 2019).