ANIMAL WELFARE INSTITUTE

Legal Protections for Animals on Farms

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Nine billion land animals are raised and slaughtered for food in the United States each year, yet the laws protecting these animals are strikingly limited. The absence of legal protections for farm animals allows producers to keep them in inhumane conditions with a poor quality of life. Throughout a majority of their short lives, farm animals are closely confined and deprived of the chance to exhibit natural behaviors. Common practices on factory farms include confining pregnant pigs to crates so small they cannot turn around, confining hens to cramped, barren cages, castrating male pigs without anesthesia, and killing sick and injured animals with blunt force. Producers utilize these practices in order to maximize productivity and profits.

FEDERAL LAWS

No single federal law expressly governs the treatment of animals used for food while on farms in the United States. In fact, these animals do not have legal protections until they are transported off the farm.[1] Even then, poultry, which account for 98 percent of animals raised for food, do not fall under the protection of the few federal laws that apply to livestock.[2] For example, both the Humane Methods of Slaughter Act and the Twenty-Eight Hour Law, the latter of which regulates when animals must be given food and time to rest during transport, exclude poultry.[3] Moreover, the federal Animal Welfare Act[4]—a law providing minimal standards of care for certain animals—exempts farm animals, except those used in research.

To date, all federal efforts to change the legal status quo for farm animals have failed. For example, in 1989, Rep. Charles Bennett (FL-3) introduced the Veal Calf Protection Act in the House of Representatives.[5] The bill, which aimed to limit the use of tiny veal crates that prevent calves from turning around or lying down, was referred to the House Subcommittee on Livestock, Dairy and Poultry, but never went before the full House for a vote.[6] Federal legislators also tried to pass a law in 2008 prohibiting cruelty to farm animals, but the bill only attained six cosponsors and, after being referred to the subcommittee, received no hearing.[7] In 2010, Rep. Diane Watson (CA-33), backed by animal advocacy groups, introduced a bill intended to prohibit the federal government from procuring food products from animals not given enough room to freely extend their limbs.[8] While this bill had 40 cosponsors, it, too, was not given a hearing by the subcommittee.[9]

The Egg Products Inspection Act Amendments of 2013 attempted to enact on-farm protections for animals through federal legislation.[10] It would have increased minimum cage size requirements for egg-laying hens and producers would have been required to indicate on the product packaging if their eggs came from birds kept in cages.[11] However, similar to other on-farm federal legislation, the bill did not advance, and attempts to add its provisions to the Agriculture Act of 2014 (also referred to as the 2014 Farm Bill) were unsuccessful.[12]

The most recent attempt to improve on-farm protections began on January 18, 2017, when the USDA announced a final rule incorporating animal welfare standards into the National Organic Program.[13] The rule claimed to "clarif[y] how organic producers and handlers must treat their animals, bring[] clarity to the existing USDA organic regulations, and add[] new requirements for organic livestock and poultry living conditions, transport, and slaughter practices."[14] The effective date of the new organics standards was initially March 20, 2017.[15] However, the USDA twice delayed the rule's implementation[16]—first, until May 19 and then until November 14, 2017.[17] At the time of the second delay, the USDA opened a second Organic Livestock and Poultry Practices Proposed Rule for public comment to determine what action the USDA should take on the issue.[18]

After another rule delaying the effective date until May 14, 2018, was published in November, the USDA proposed a rule to withdraw the OLPP final rule on December 18, 2017. Despite the fact that 63,000 of the 72,000 comments submitted opposed this decision, the USDA withdrew the rule on March 13, 2018. The USDA cited as its reasons for withdrawal the fact that the Organic Foods Production Act does not give the Agricultural Marketing Service (AMS) statutory authority to promulgate animal welfare standards. Additionally, the AMS argued that the cost of implementation was too high for the benefits.[19] Currently, the withdrawal of the organic rule is the subject of pending litigation in both the D.C. Circuit and the Ninth Circuit Court of Appeals.[20]

While there are no laws other than the Organic Food Production Act that directly address the treatment of animals on farms, the Animal Health Protection Act (AHPA) may give the United States Department of Agriculture (USDA) indirect authority to regulate the raising of animals for food.[21] Congress passed the AHPA in order to prevent and control animal diseases and pests.[22] It gives the USDA broad authority to "carry out operations and measures to detect" and control diseases of livestock.[23] This allows the USDA to regulate animal husbandry practices that could lead to disease outbreaks. Unfortunately, the USDA has not used this authority to change how animals are treated on farms.

STATE LAWS

Animal Cruelty Statutes and Their Relation to Farm Animals

Every state prohibits animal cruelty, but the definition of *animal cruelty* varies from state to state. The term *animal* is also subject to varied definitions across states' statutory codes—with the definitions often serving to exclude a particular class of animal. For example, Delaware expressly excludes fish from the definition of *animal*, and Iowa excludes "livestock" and "fur-bearing animals," among others.[24] A common definition found in several states for *animal*, which includes farm animals, is "every dumb creature."[25] Yet, many states treat farm animals differently from dogs, cats, and other companion animals under their cruelty statutes.

Many state cruelty codes exempt practices that are routinely performed on farm animals. Animal cruelty laws commonly protect nonfarm animals from neglect, mutilation, and other forms of mistreatment. However, most state cruelty codes only protect farm animals from situations that no responsible farmer would defend, such as kicking "downed" animals or stabbing animals with pitchforks in order to get them to move.[26] In 37 states, common or recognized animal husbandry practices—such as tail docking and castration without anesthesia—are exempt from the definition of cruelty, unless the act is specifically prohibited (see Table 1, page 4). A person who performed these acts on a dog or cat could be charged with animal cruelty, but because the practices are considered routine in the agriculture industry they can be performed on farm animals without penalty. In addition to having animal cruelty laws, some states have aggravated animal cruelty statutes. Under these laws, individuals who abuse animals can be charged with more severe penalties. However, as noted above, accepted agricultural husbandry practices may be exempt from punishment.

Three states—Nebraska, Iowa, and Texas—have expressly excluded livestock from their animal cruelty statute, and instead created specific legislation aimed at farm animal abuse.[27] Nebraska's Livestock Animal Welfare Act makes it a crime to

cruelly mistreat livestock, including poultry; but commonly accepted husbandry practices are exempt from the statute.[28] An interesting provision in the law prohibits a person who is convicted of a class IV felony under 54-903 (the abandonment/cruel neglect or mistreatment provision of the statute) from owning or possessing livestock for at least five years after the date of their conviction.[29] Iowa's statute for injuries to livestock is much less severe than its counterpart for other animals; the law makes customary husbandry practices the accepted welfare standard.[30] Texas prohibits punishment for using any generally accepted animal husbandry practices.[31] Wyoming, by comparison, has a separate cruelty statute for livestock but does not expressly exclude them from the general cruelty law.[32]

New Jersey is another state that treats farm animals uniquely under the law. In 1996, the New Jersey Legislature amended its cruelty law, delegating authority to the New Jersey Department of Agriculture (NJDA) to write regulations concerning the "humane raising, keeping, care, treatment, marketing, and sale of domestic livestock."[33] The NJDA was told to look to "whether the treatment of [the] animals was 'humane'" as a guiding principle in creating regulations.[34] In the final regulations, the department allowed an exemption to animal cruelty for "routine husbandry practices."[35] The NJDA defined "routine husbandry practices" broadly to mean "techniques commonly taught by veterinary schools, land grant colleges, and agriculture extension agents."[36] The regulations also named specific practices that would fall within this exemption and were presumptively humane.

The New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) sued the NJDA, arguing in part that adoption of the "routine husbandry practices" clause was arbitrary and capricious because of its broad definition.[37] The court agreed with this, and also agreed with the NJSPCA that the department did not show enough evidence to support the assertion contained in the regulations that cattle tail docking was humane; therefore, the regulations allowing cattle tail docking violated the statute.[38] The court found that other husbandry practices such as de-beaking of birds and castration of mammals could be humane; however, the regulatory qualifications for performing these practices were deemed too vague.[39]

After the lawsuit, the NJDA rewrote some of its regulations. Currently, they only allow for tail docking of cattle when performed "by a veterinarian for individual animals."[40] Additionally the regulations allow for the de-beaking of birds if it is done in compliance with the *United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks*, and is performed by a knowledgeable individual, which is defined in the regulations.[41]

North Carolina's criminal statute against cruelty to animals is similar to other state cruelty statutes; however, North Carolina has a civil remedy for animal cruelty, which distinguishes it from other states.[42] The law allows any interested person to file a lawsuit, even if that person does not have "possessory or ownership rights in an animal."[43] If a plaintiff prevails in a case like this, the court may give them ownership of the animal and order the defendant to pay the cost of food, water, shelter, and care.[44] This law is unique in that it allows any person, including organizations, to stand up for animals, even farm animals, when they believe they are being abused. However, the law, like most cruelty laws, has an exemption for "lawful activities conducted for purposes of … production of livestock, poultry, or aquatic species."[45]

In sum, state cruelty laws do not exempt farm animals per se. Many state cruelty codes do exempt a number of practices that are routinely performed on farm animals, however. While the cruelty codes of three states do not include farm animals under the definition of "animal," each of these states cover farm animals under a separate welfare statute that addresses intentional neglect and/or cruelty. There is no question that farm animals are treated far differently from other domestic animals not used for commercial purposes and receive significantly inferior protection under many state cruelty laws.

TABLE I. CRUELTY STATUTES: COMMON ANIMAL HUSBANDRY PRACTICE EXEMPTIONS[46]

State	Statutory Code Section
Alabama	Ala. Code § 13A-11-14.1(c)(1)
Alaska	Alaska Stat. § 11.61.140(c)(3)
Arizona	Ariz. Rev. Stat. Ann. § 13-2910(c)(2)
Arkansas	Ark. Code Ann. § 5-62-105(a)(5)
Colorado	Colo. Rev. Stat. § 18-9-201.5(1)
Connecticut	Conn. Gen. Stat. § 53-247(b)
Florida	Fla. Stat. § 828.125(5)
Georgia	Ga. Code Ann. § 16-12-4(g)
Idaho	Idaho Code § 25-3514(5)
Illinois	510 Ill. Comp. Stat. 70/13
Indiana	Ind. Code § 35-46-3-5(5)
Iowa	Iowa Code §§ 717B.1, 717B.3A(2)(c)
Kansas	Kan. Stat. Ann. § 21-6412 (c)(6)
Maine	Me. Stat. tit. 7, § 4011(2)(d)
Maryland	Md. Code Ann., Crim. Law § 10-603(1)
Michigan	Mich. Comp. Laws § 750.50b(8)
Missouri	Mo. Rev. Stat. § 578.007(8)
Montana	Mont. Code Ann. § 45-8-211(4)(b)
Nebraska	Neb. Rev. Stat. § 54-907
New Jersey	N.J. Stat. Ann. § 4:22-16(e)
New Mexico	N.M. Stat. Ann. § 30-18-1(l)(4)
North Carolina	N.C. Gen. Stat. § 14-360(c)(5)
North Dakota	N.D. Cent Code § 36-21.2-01(4)
Ohio	Ohio Rev. Code Ann. § 959.13(4)
Oregon	Or. Rev. Stat. § 167.335
Pennsylvania	18 Pa. Cons. Stat. § 5511(c)(3)
South Carolina	S.C. Code Ann. § 47-1-40(c)
South Dakota	S.D. Codified Laws § 40-1-17
Tennessee	Tenn. Code Ann. § 39-14-202(f)(1)
Texas	Tex. Penal Code Ann. § 42.09(f)(2)
Utah	Utah Code Ann. § 76-9-301(1)(b)(ii)
Vermont	Vt. Stat. Ann. Tit. 13, § 351b(3)
Virginia	Va. Code Ann. § 3.2-6570(c)
Washington	Wash. Rev. Code §§ 16.52.185, 16.52.205(6)
West Virginia	W. Va. Code § 61-8-19(f)
Wisconsin	Wis. Stat. § 951.14
Wyoming	Wyo. Stat. Ann. § 6-3-203(m)

Enforcement of State Animal Cruelty Laws

As noted above, state animal cruelty laws are limited in terms of protecting farm animals, and they generally offer little to penalize those who abuse farm animals. Several states (e.g., Nebraska[47] and Ohio[48]) explicitly exclude cruelty to farm animals from felony charges, while Pennsylvania's felony charges apply only to zoo animals, cats, and dogs.[49] In Utah, felony charges for animal cruelty can only be applied to companion animals.[50] Oregon excludes "commercially grown poultry" unless there is evidence of gross negligence.[51]

However, there have been some successful prosecutions under state cruelty laws for on-farm animal abuse. In 1998, after a People for the Ethical Treatment of Animals (PETA) undercover investigation revealed systematic, horrific treatment of farm animals at a pig breeding operation in North Carolina, a grand jury indicted three workers and a manager for felony abuse.[52] The three workers were eventually convicted of animal cruelty and one served five months in jail.[53] Another PETA investigation at Seaboard Farms in Oklahoma led to a plea agreement in which the defendant pleaded guilty to felony animal cruelty charges.[54]

In Iowa, the top pork-producing state, 22 charges were brought against workers at a pig farm after an undercover investigation revealed the workers beating pigs with metal rods and stabbing clothespins into the animals' faces.[55] Five of the six employees pleaded guilty to the charges against them.[56]

These and similar cases illustrate how animal cruelty statutes can be used to protect farm animals. However, prosecutors have discretion over which cases they want to take on and, unfortunately, animal cruelty is often low on the list.[57] This may be due, in part, to the fact that it is often difficult, if not impossible, to gather sufficient evidence of animal abuse on farms without undercover investigations or the testimony of employee whistleblowers; confined animal housing facilities are routinely closed off to the public. Additionally, animal cruelty prosecutions do not always get to the root cause of the farm animal abuse. Employees are punished for their egregious actions but those in managerial positions who allowed these practices to take place usually are not—and continue to operate as before once the attention has died down.

Strengthening Farm Animal Protection Through State and Local Legislation

In addition to broad animal cruelty laws, a number of states have enacted legislation specifically targeting some of the agriculture industry's most egregious animal husbandry practices. (These laws are described in Table 2.) Efforts have focused on limiting gestation crates for pregnant sows, crates or tethers for veal calves, battery cages for egg-laying hens, tail docking of meat and dairy cows, and, on a smaller scale, the force-feeding of ducks and geese for foie gras. Advocates have focused on these abusive practices, which otherwise would often be considered "routine husbandry practices" and therefore exempt from animal cruelty statutes. Below is a chronological account of recent efforts to limit specific forms of farm animal abuse through state legislation.

In 2004, California became the first and only state to ban the force-feeding of ducks and geese used for foie gras. As written, the law prohibited selling products from birds who were forcefully fed in order to enlarge their livers.[58] The law went into effect in 2012 after contentious attempts by producers and some restaurants to stop it through litigation.[59] In 2015, a US District Court overturned the section of law banning the sale of foie gras.[60] California appealed the decision to the Ninth Circuit Court of Appeals, and the three judge panel unanimously reversed the district court decision in 2017, reinstating the ban. Opponents then petitioned the Supreme Court for a writ of certiorari. The court asked the solicitor general to file a brief in the case. It is unlikely that the Supreme Court will deny or grant certiorari until 2019.[61] There have also been attempts to prohibit the sale of foie gras in New York state through litigation, but these attempts have proven unsuccessful thus far.[62] Additionally, Chicago banned foie gras in 2006, but in 2008 the city council overturned the ban.[63]

In 2004, Alaska adopted standards of care for animals with bare minimum requirements: animals must be given enough food and water to maintain their health, an environment that protects and maintains their health, and "reasonable medical care at times and to the extent available and necessary to maintain … animal[s] in good health."[64] The law also gives authority to the Department of Environmental Conservation (DEC) to write regulations to implement the law. In 2011, Alaska's Office of the State Veterinarian (OSV), a subdivision of the DEC, initiated a process to adopt more comprehensive animal care standards.[65] By July 2012 the OSV had drafted standards and taken public comments on them, but final standards have yet to be adopted.

In 2007, Oregon became the first state to limit the use of gestation crates through the legislative process.[66] The law makes it illegal to confine a pregnant pig for more than 12 hours a day in a space that prohibits her from lying down and fully extending her limbs, or turning around freely.[67] Governor Ted Kulongoski signed the bill into law on June 28, 2007, when there were approximately 4,000 breeding sows in the state.[68] Enforcement of this law could be difficult, however, because of the time element.[69] In order to build a case against a pork producer, one would need to show an animal being confined for more than 12 hours.

Following Oregon's lead, in 2008, Colorado limited gestation crates for pregnant pigs and crates that do not allow veal calves to turn around and lie down.[70] The statutory language is similar to Oregon's, but Colorado's prohibition is likely easier to enforce as there is no allowance for restriction less than 12 hours per day.[71] The one subsection in the Colorado statute that may create enforcement difficulties allows for sows to be kept in crates 12 days before farrowing (giving birth).[72] It may be difficult for those attempting to enforce the law to obtain expected farrowing dates or determine if a sow has been confined longer

than 12 days. Violation of this law is a class two misdemeanor, punishable by up to one year in jail, a $5,000 fine, or both.[73]

In 2008, Arizona enacted legislation giving authority to the director of the Department of Agriculture to adopt rules for poultry husbandry standards, but limited the rules to egg producers with at least 20,000 hens at each facility.[74] The law also explains that poultry husbandry practices are a statewide issue and counties, cities, and towns cannot adopt further regulation over the subject matter.[75] In the year following the law's enactment, the director codified poultry husbandry standards in the Arizona Administrative Code.[76] The rule adopts United Egg Producer's 2008 *Animal Husbandry Guidelines*, which allow as little as 67 square inches of floor space per bird and do not provide for any form of enrichment for the hens.[77] All eggs sold in the state must come from hens raised under these standards, unless the operation maintains fewer than 20,000 hens or the hens are raised cage-free.[78] Additionally, all eggs sold in Arizona must display the UEP certified logo or an equivalent third-party certification.[79]

Three states—Maine, Michigan, and California—passed legislation in 2009 to limit cruel animal agriculture practices:

- Maine banned the binding or restricting of sows or calves for a majority of the day in a manner that stops them from lying down, standing up and fully extending their limbs, and turning around freely.[80] A first violation is considered a civil violation and can result in a fine of up to $2,500.[81]

- Michigan passed a law that limited the use of gestation crates, veal crates, and battery cages.[82] The law provides that covered animals—gestating sows, calves raised for veal, and egg-laying hens— shall not be confined for a majority of the day in a manner that prohibits the animal from performing movements such as turning around.[83] The law further requires 144 square inches of floor space for each egg-laying hen.[84] The provision relating to veal calves went into effect in 2012, while the provisions relating to gestation crates and egg-laying hens go into effect in 2019.[85]

  Originally, the Michigan Legislature introduced two industry-backed bills, the first codified the industry's quality assurance programs and the second created an industry-stacked animal care advisory board.[86] Unimpressed, animal advocacy groups pressured the legislature to substitute the language of the bill with language taking animal welfare into account. The industry went along with the plan in order to stop animal advocates from pursuing a citizen initiative campaign to place a stronger animal protection measure on the state ballot. The Michigan Senate passed the new version unanimously, while the House passed it 86 to 22.[87]

- California passed a bill that banned tail docking of cattle unless necessary to save the animal's life or relieve its pain.[88]

Also in 2009, Maine passed a resolution authorizing the state's commissioner of agriculture, food, and rural resources to develop best management practices for poultry facilities with more than 10,000 birds.[89] The resolution followed an undercover investigation at the largest egg farm in New England, which captured images of workers swinging birds in circles by their necks to kill them, rotting carcasses left in cages with living birds, and birds with broken bones and open wounds.[90] The commissioner subsequently developed standards, but did not stray far from the industry's status quo. The standards specify that (1) companies must designate an individual responsible for overseeing the care and welfare of animals, (2) new housing built after January 1, 2010, must allow for 76 square inches of floor space per brown egg-laying hen and 67 square inches for white leghorn hens, and (3) beak trimming without anesthesia is allowed.[91]

In 2010, California passed a law banning the sale of shelled eggs from egg-laying hens confined in a manner not in compliance with the codified language of Proposition 2, a California ballot measure that passed in 2008.[92] The law allows hens raised in California to be kept confined only if they can turn around, lie down, stand up, and fully extend their wings without touching the sides of a cage.[93] In addition to the welfare concerns, California passed the shelled-egg law to create an even playing field between in-state and out-of-state egg producers.[94] Violation of the law is punishable by a fine of $1,000, and up to 180 days in jail.[95]

Additionally, in 2013, the California Department of Food and Agriculture (CDFA) promulgated regulations pertaining to the confinement of egg-laying hens as a matter of food safety.[96] The regulation states that after January 2015, "no egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply

with [the expressed standards]."[97] Each egg-laying hen, when there are nine or more birds, must be provided with 116 square inches of floor space.[98] The formula used to determine the space allotted per bird if there are fewer than nine birds is: 322+[(n-1) x 87.3]/n, where n is equivalent to the number of birds.[99]

In February 2014, 11 months before the law went into effect, Missouri Attorney General Chris Koster and five other state attorneys general filed a lawsuit against California, attempting to stop the law from taking effect.[100] The states challenged the California law based on the Commerce and Supremacy Clauses of the United States Constitution. In response to these legal challenges, the District Court for the Eastern District of California dismissed the claims, finding that the states failed to demonstrate that their citizens suffered an injury in fact.[101] Without a substantial harm to their citizenry, the states were unable to establish constitutional standing.[102] On appeal, the Ninth Circuit affirmed and remanded the case, agreeing that the allegations claiming the law "would result in fluctuations of egg prices" was insufficient to establish standing.[103] Finally, in 2017, the Supreme Court of the United States declined to hear the case, allowing the Ninth Circuit decision to stand.[104]

Despite the various legal challenges, the 2010 shelled-egg law, the CDFA's shell egg food safety regulations, and Proposition 2 all went into effect on January 1, 2015. Two years later, on February 17, 2017, California brought the first-ever criminal charges against an egg-producer within the state.[105] Brought by District Attorney Michael Ramos (who also prosecuted the Westland/Hallmark downed cattle case mentioned later in this report), the charges included 39 counts of violating California's Proposition 2.[106]

In 2011, Oregon again enacted legislation pertaining to animal confinement—this time affecting egg-laying hens. The law puts a timeline in place for egg producers to move hens into "enriched colony cages" by 2026, a process which is to be monitored by the Oregon Department of Agriculture.[107] According to the law, a person must not sell eggs or egg products if they know, or reasonably should know, that the products came from hens confined in a manner that does not comply with the law and its regulations.[108] Five stages, running from 2012 to 2026, slowly push producers to, in the end, meet enclosure standards equivalent to the requirements for certification of enriched colony facility systems established in the American Humane Association's (AHA) farm animal welfare program.[109] The AHA certification requires that (1) all birds have enough space to turn around and stretch their wings "without difficulty," (2) each bird be allotted a minimum of 116.3 square inches (including nest space), (3) hens have access to a forage or scratch mat at all times, (4) a nest box must be within each unit, and (5) perches must be provided.[110]

However, the Oregon regulations only provide that enclosures constructed after January 1, 2012, "must be convertible into an enclosure that allows a minimum of 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height," or must directly meet these space requirements.[111] This leaves several important welfare requirements of AHA certification out of Oregon's regulatory framework. Though, according to officials in Oregon's Department of Agriculture, the regulations will be amended to reflect certain standards found within the AHA welfare program.[112]

Washington also codified rules for egg-laying hens in 2011. The law is similar to Oregon's law in that it sets timelines for when egg producers must comply with the law's standards. For example, "all new and renewal [egg handler or dealer] applications submitted … on or after January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce … are produced by commercial egg layer operations that either" are approved by AHA "enriched colony cage" protocol or equivalent standards set by the regulating agency.[113] The law exempts producers with fewer than 3,000 egg-laying hens.[114] Unlike Oregon, the Washington law mandates that egg-laying hens have "areas for nesting, scratching, and perching."[115]

In 2012, Rhode Island passed a law banning gestation crates, veal crates, and routine tail docking.[116] Under the law, anyone who intentionally cuts the tail off any bovine is guilty of a misdemeanor unless performed by a "veterinarian for veterinary purposes," and the animal is anesthetized, the procedure is done in a manner that minimized long-term pain and suffering, and the procedure is performed using suitable instruments in hygienic conditions.[117] Violating the law is punishable by up to a year in prison and a $500 maximum fine.[118]

In 2018, Rhode Island added battery cages to the list of extreme confinement practices that the state will phase out. The law states that egg-laying hens raised in Rhode Island must be allocated at least 216 square inches and must be able to fully spread both wings without touching the side of an enclosure or

other hens. This is currently the highest legal minimum space requirement for egg-laying hens in the United States.[119]

In summary, through legislation during the past decade, four states banned or limited the use of sow gestation crates, four states banned or limited the use of conventional battery cages for housing egg-laying hens, four states banned or limited the use of veal crates, one state prohibited the force-feeding of birds for foie gras, and two states put a strict limit on cattle tail docking.

Many of the state laws limiting specific farming practices, however, have language that may make regulation difficult. Anti-confinement laws have several common exemptions for periods when animals are on exhibition, in use for agriculture research, being transported, and being examined[120]—although the overall impact of these exemptions is likely minimal. Two of the practices targeted by state legislation—tail docking and veal crates—are being voluntarily phased out by the industry.[121] (The threat of legislative bans likely had an impact on the industry's decision to end the practices, particularly in the case of dairy cattle tail docking.) Moreover, and perhaps most importantly, many of the states that have enacted legislation limiting animal husbandry practices do not have large numbers of farmed animals impacted by the curtailed practices; in some cases, the number is very small or zero.

Anti-confinement laws passed to date have not actually banned close confinement altogether. The laws limit or ban some of the most extreme confinement methods, such as gestation and veal crates. But producers remain free to place gestating sows in "turn-around" crates, and calves raised for veal may still be housed in small stalls so long as the animal can turn around. It appears that producers have opted to discontinue use of gestation and veal crates in response to the laws passed thus far. However, none of the laws provide for the welfare of the animals in terms of mandating group housing or requiring appropriate bedding and environmental enrichment—and there are no guarantees that producers will address these issues in order to maximize animal welfare and minimize disease and mortality.

While the gestation and veal crate laws appear to have been successful in eliminating extreme confinement, this is not the case for hen battery cages. As stated above, laws to restrict the use of battery cages have been passed in Michigan, Oregon, Rhode Island, and Washington by legislation and in California and Massachusetts by ballot initiative (discussed in the next section).

However, Michigan has not indicated what type of housing will be mandated under the law, and California allows producers to use battery cages with fewer birds, so long as the legal space requirement is met. California also allows—along with Oregon and Washington—the use of larger "colony" cages, which are similar to conventional battery cages but accommodate larger numbers of hens. All colony cages provide more space per hen than conventional cages, and "enriched" forms of the colony cage also provide perches, nest boxes, and scratching areas. But because California, Massachusetts, Michigan, Oregon, and Rhode Island do not require these enrichments, cages lacking enrichments are acceptable in these states. At this time, Washington is the sole state that expressly mandates the use of enrichments for egg-laying hens.[122]

While many states make strides toward higher welfare eggs by prohibiting extreme confinement, Iowa appears committed to maintaining the status quo. In 2018, Iowa became the first state to pass a law mandating that grocery stores sell conventional eggs from caged hens. Specifically, the law requires any grocery store participating in a federal food program selling "specialty eggs" (cage-free, free-range, or enriched colony cages) to also stock eggs from hens housed in conventional battery cages.[123]

Despite these shortcomings, anti-confinement laws do further the goal of improving farm animal welfare. First and foremost, they serve to educate elected officials, media, and the public regarding the treatment of animals raised for food. Increased awareness may in turn impact consumer food choices and the requirements that food retailers impose on their suppliers. The laws probably also deter industrial farms from planting roots in a particular state. They codify standards for farm animal production practices in state law, and may eventually lead to federal regulation of farm animal welfare.

Strengthening Farm Animal Protection Through Ballot Initiatives

In addition to working through the legislative process, animal advocates have sought to pass farm animal protection laws through citizen-initiated state ballot measures. (Laws passed through the ballot initiative process are included in Table 2, page 10.) Twenty-four states allow for citizen initiative ballot measures, which give citizens the power to bring proposals to statewide elections.[124] Since the 1920s, animal advocates have used the ballot initiative process to influence how animals are treated.[125] But it was not until 1998 that a ballot initiative

relating to the consumption of animals passed: That year, California voters approved a ban on horse slaughter for human consumption.[126]

To date, four states—Arizona, California, Florida, and Massachusetts—have placed limits on specific animal husbandry practices through the ballot initiative process. Florida limited the use of sow gestation crates through the initiative process on November 5, 2002—the first time a ballot initiative was used to improve living conditions for conventionally raised farm animals.[127] Fifty-five percent of Florida voters (over 2.6 million people) voted in favor of the initiative.[128] The measure is now codified in the Florida Constitution. In addition to the anti-confinement language, the Florida Constitution now states, "Inhumane treatment of animals is a concern of Florida citizens."[129] Persons found guilty under the constitutional amendment can be fined up to $5,000 and imprisoned for up to one year.[130] Each sow held in illegal confinement is considered a separate offense for the violator.[131]

In 2006, Arizona passed an initiative, known as the Humane Treatment of Farm Animals Act, which restricted the use of gestation crates and veal crates, by a margin of 62 percent to 38 percent.[132] The law went into effect six years later, on December 31, 2012.[133] Arizona had approximately 31,000 sows in the state at the time voters passed the measure, most confined in 2' x 7' crates.[134] The measure also created the Arizona Humane Treatment of Farm Animals Fund.[135] This fund allows the Arizona attorney general to deposit money into a fund when violators of the Humane Treatment of Farm Animals Act are fined and when donations are made.[136] The funds are used for mandatory and administrative expenses of the law.[137]

Through a 2008 ballot initiative, California restricted three forms of cruel confinement: battery cages for egg-laying hens, gestation crates, and veal crates.[138] A majority of California citizens—more than 8.2 million people—voted yes on the ballot measure known as Proposition 2.[139] In 2007, the year before Proposition 2 was on the ballot, an undercover investigation of Hallmark Meat Packing Company in Chino, California, led to the largest meat recall in US history.[140] Media coverage of this incident helped show Americans the severe abuses that take place on factory farms. This helped propel the ballot initiative to victory the following year.

California codified Proposition 2 into its Health and Safety Code, and the law went into effect January 1, 2015.[141] The language is similar to many of the other state restrictions on specific husbandry practices—it prohibits confining or tethering sows, veal calves, and egg-laying hens for all or a majority of the day in ways that prevent them from lying down, turning around, standing up, and fully extending their limbs.[142] The CDFA determined that 116 square inches per bird meets the requirement, but many advocacy groups believe the standards can only be met with cage-free systems.[143] Violation of the law is a misdemeanor; upon conviction a person may be fined up to $1,000, imprisoned not more than 180 days, or both.[144]

In 2016, Massachusetts placed Question 3, An Act to Prevent Cruelty to Farm Animals, on its November ballot.[145] The initiative prohibited the cruel confinement of animals, defined as "confined so as to prevent a covered animal from lying down, standing up, fully extending the animal's limbs, or turning around freely."[146] In addition, the proposed language implemented a sales ban on products from animals confined in a cruel manner.[147] Before the proposal was placed on the ballot, the highest court in Massachusetts unanimously ruled that the sales provisions and the animal welfare concerns "share a common purpose of preventing farm animals from being caged in overly cramped conditions."[148] The initiative passed overwhelmingly, with 78 percent of the vote (over 2.5 of nearly 3.3 million votes cast) in favor of the referendum.[149] The rule requires a phase-in program, with full compliance required by January 1, 2022.[150] Finally, the law allows the Massachusetts attorney general to impose a $1,000 civil fine for each violation.[151]

Ballot initiatives contribute to the forward movement of farm animal welfare in the United States, particularly in terms of public awareness, since measures on the ballot generally receive far greater media attention than bills introduced in the state legislature. In fact, it could be argued that California's Prop. 2 campaign represents the single most significant event to date for farm animal protection, responsible for generating mainstream interest in the treatment of farm animals throughout the country.

Nevertheless, there are limits to the ballot initiative strategy. Twenty-six states do not have the ballot measure process, and many of these states are top animal production states. For example, Iowa, the state with the highest egg production (with production nearly double that of Ohio, its nearest competitor)[152] does not allow for citizen-initiated ballot measures. The states with the second-, third-, and fourth-

largest red meat production in 2012 (Iowa, Kansas, and Texas) also do not allow for citizen initiatives.[153] In addition, the advent of right-to-farm laws that seek to shield agricultural operations from further restrictions make ballot initiatives regulating industrial livestock production difficult or nearly impossible to pass.[154]

TABLE 2. STATE LAWS LIMITING FARM ANIMAL HUSBANDRY PRACTICES

Tail Docking			
State	**Year**	**Text**	**Enacted Through**
California	2009	Prohibits tail docking of cattle unless for emergency purposes.	Legislation: Cal. Penal Code § 597n
New Jersey	2012	Prohibits tail docking of cattle unless performed by a veterinarian for individual animals.	Regulation: N.J. Admin. Code § 2:8-2.6
Ohio	2011	Prohibits tail docking of dairy cattle unless performed by a veterinarian and medically necessary.	Regulation: Ohio Admin. Code 901:12-6-02
Rhode Island	2012	Prohibits tail docking of cattle unless performed by a veterinarian for veterinary purposes and the animal is anesthetized.	Legislation: 4 R.I. Gen. Laws Ann. § 4-1-6.1

Sow Gestation Confinement			
State	**Year**	**Text**	**Enacted Through**
Arizona	2006	Prohibits confining a pig during pregnancy for all or a majority of the day in a manner that prevents her from lying down and fully extending her limbs, or turning around freely.	Ballot Initiative codified as: Ariz. Rev. Stat. Ann. § 13-2910.07
California	2008	Prohibits confinement of sows for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around.	Ballot Initiative Codified as: Cal. Health & Safety Code § 25990
Colorado	2008	Prohibits confinement of sows in a manner that does not allow them to stand up, lie down, and turn around without having to touch the sides of enclosures. However, sows can be placed in farrowing crates 12 days prior to expected farrowing date.	Legislation: Colo. Rev. Stat. Ann. § 35-50.5-102
Florida	2002	Prohibits confinement of pregnant pigs in a manner that does not allow them to turn around freely; there is a separate offense for each sow so confined.	Ballot Initiative Codified as: Fla. Const. art. X, § 21
Maine	2009	Prohibits confinement of sows for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around freely.	Legislation: Me. Rev. Stat. tit. 7, § 4020
Massachusetts	2016	Prohibits confinement of sows in a manner that prevents them from lying down, standing up, fully extending their limbs, or turning around freely.	Ballot initiative codified as: Mass. Gen. Laws ch. 129 App., § 1-5
Michigan	2009	Prohibits confinement of sows for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around freely.	Legislation: Mich. Comp. Laws Ann. § 287.746
Ohio	2010	As of 2026, gestation stalls can only be used post weaning for a period of time that seeks to maximize embryonic welfare and allows for confirmation of pregnancy.	Regulation: Ohio Admin. Code 901:12-8
Oregon	2007	Prohibits confinement of sows for a majority of the day in a manner that does not allow them to lie down, fully extend their limbs, and turn around freely.	Legislation: Or. Rev. Stat. § 600.150
Rhode Island	2012	Prohibits knowing confinement of sows in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around freely.	Legislation: 4 R.I. Gen. Laws Ann. § 4-1.1-3

Veal Calf Confinement			
State	**Year**	**Text**	**Enacted Through**
Arizona	2006	Prohibits confining a veal calf for all or a majority of the day in a manner that prevents him from lying down and fully extending his limbs, or turning around freely.	Ballot Initiative codified as: Ariz. Rev. Stat. Ann. § 13-2910.07
California	2008	Prohibits confinement of veal calves for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around.	Ballot Initiative codified as: Cal. Health & Safety Code § 25990
Colorado	2008	Prohibits confinement of calves in a manner that does not allow them to stand up, lie down, and turn around without having to touch their enclosures.	Legislation: Colo. Rev. Stat. Ann. § 35-50.5-102
Kentucky	2014	Veal calves must be raised in group pens.	Regulation: 302 Ky. Admin. Regs. 21:030
Maine	2009	Prohibits confinement of calves for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around freely.	Legislation: Me. Rev. Stat. tit.7 § 4020
Massachusetts	2016	Prohibits confining of veal calves so as to prevent them from lying down, standing up, fully extending their limbs, or turning around freely.	Ballot initiative codified as: Mass. Gen. Laws ch. 129 App., § 1-5
Michigan	2009	Prohibits confinement of veal calves for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their limbs, and turn around freely.	Legislation: Mich. Comp. Laws Ann. § 287.746
Ohio	2010	Veal calves must be housed in group pens by 10 weeks of age. Calves must be able to stand without impediment, rest using normal postures, groom, eat, turn around, and lie down.	Regulation: Ohio Admin. Code §§ 901:12-4, 901:12-5-03
Rhode Island	2012	Prohibits knowing confinement of veal calves in a manner that does not allow them to lie down, stand up, fully extending their limbs, and turn around freely.	Legislation: 4 R.I. Gen. Laws Ann. § 4-1.1-3

Egg-laying Hen Confinement			
State	**Year**	**Text**	**Enacted Through**
California	2008	Prohibits confinement of egg-laying hens for the majority of the day in a manner that does not allow them to lie down, stand up, fully extend their wings, and turn around.	Ballot Initiative Codified as: Cal. Health & Safety Code § 25990
Massachusetts	2016	Prohibits confining egg-laying hens so as to prevent them from lying down, standing up, fully extending their limbs, or turning around freely.	Ballot initiative codified as: Mass. Gen. Laws ch. 129 App., § 1-5
Michigan	2009	Prohibits confinement of egg-laying hens for a majority of the day in a manner that does not allow them to lie down, stand up, fully extend their wings, and turn around freely. Fully extending limbs is defined as "at least 1.0 square feet of usable floor space per hen."	Legislation: Mich. Comp. Laws Ann. § 287.746(g)
Oregon	2011	Dept. of Agriculture has authority to create regulations that will phase in colony cages by 2026 that comply with American Humane Association's farm animal welfare certification standards or their equivalent.	Legislation: Or. Rev. Stat. § 632.840
Rhode Island	2018	Prohibits confinement of egg-laying hens in a manner that prevents them from fully stretching their wings without touching the sides of the enclosure or other birds. Also mandates each hen have access to usable floor space of 1.5 square feet.	Enacted Through Legislation: R.I. Gen. Laws Ann §§ 4-1.1-1 to 1.5
Washington	2011	As of 2026, for commercial producers with 3,000 egg-laying hens or more, each hen must have 116.3 square inches of space and access to areas for nesting, scratching, and perching.	Legislation: Wash. Rev. Code §§ 69.25.065, 69.25.107

ANTI-WHISTLEBLOWER STATE LAWS

Farm animal welfare improvements over the past several years have resulted in significant push-back from the animal agriculture industry. Attempts have been made in several states to pass legislation that makes it a crime to take unauthorized videos and photographs at farming facilities. Some states have tried to make it a crime to lie on employment applications, while other states have tried to place restrictions on when evidence of animal abuse can be turned in to state authorities. These whistleblower suppression bills, often referred to as "ag-gag" legislation—a term coined by Mark Bittman in 2011—specifically target animal advocates and criminalize attempts to make agriculture facilities more transparent.[155]

Kansas, Montana, and North Dakota have had whistleblower suppression laws for almost 25 years. All three states criminalize entering an animal agriculture facility to take recordings without approval.[156] In recent years, the industry has been pushing for more whistleblower suppression laws. Iowa passed legislation in 2012 making it illegal to give false information on an application to work in an agriculture facility—in order to prevent undercover animal advocates from obtaining employment.[157] Utah and Missouri also passed legislation in 2012: it is a misdemeanor in Utah to record images or sounds at an agriculture facility, while Missouri's law requires employees to deliver any recordings of animal abuse to authorities within 24 hours of the recording, effectively cutting short investigations and preventing investigators from gathering enough evidence to establish a pattern of animal abuse that would be necessary for successful prosecution.[158]

In 2013, whistleblower suppression legislation was introduced in 11 states: Arkansas, California, Indiana, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Tennessee, Wyoming, and Vermont. None of these bills passed, but the industry has not been deterred. In 2014, Idaho passed anti-whistleblower legislation making it illegal to record conduct at an agriculture facility or obtain employment through misrepresentation.[159] Bills were also introduced in several other states in 2014. In 2015, North Carolina passed an expansive anti-whistleblower bill that prohibits informants from disclosing information obtained not only from agriculture facilities, but also from other nonpublic businesses.[160] North Carolina's governor vetoed the bill, but the legislature overturned the veto, and the law went into effect January 1, 2016.[161] This was the first ag-gag bill to impose a civil, rather than criminal, penalty. In 2017, Arkansas became the latest state to enact ag-gag legislation.[162] Like North Carolina, the Arkansas legislation creates a civil cause of action, but it only applies to whistleblowers on agricultural and business properties.[163] Despite attempts by animal welfare organizations to stop the bill, the governor signed it and the Arkansas ag-gag law went into effect on March 23, 2017.[164]

Animal and consumer advocates are challenging several of these anti-whistleblower laws in court. In 2015, a federal district court found Idaho's law to be unconstitutional and overturned it.[165] On appeal, the Ninth Circuit Court of Appeals affirmed the lower court's holding, finding that the law violated the First Amendment.[166] A challenge to Utah's ag-gag law resulted in the law being struck down as a violation of the First Amendment. Utah did not appeal the case and was ordered to pay a $349,000 settlement to the plaintiffs in the case.[167] In February 2018, a coalition of organizations brought a lawsuit in federal court challenging Iowa's ag-gag statute. The suit is ongoing.[168] In June 2018, the Fourth Circuit Court of Appeals reversed a federal district court's dismissal of the lawsuit challenging the North Carolina ag-gag law, allowing the case to move forward.[169]

STATE LIVESTOCK CARE STANDARDS BOARDS

In addition to whistleblower suppression laws, the agriculture industry has persuaded some states to delegate authority for oversight of farm animal welfare to state livestock boards. Some states have also taken the power to regulate animal care away from local governments. Oklahoma, Georgia, South Carolina, and Alabama all have specific statutes preempting counties, municipalities, and other local governments from promulgating animal husbandry standards.[170]

The following states have established livestock care standards boards: Illinois, Indiana, Kentucky, Louisiana, Ohio, Rhode Island, Utah, Vermont, and West Virginia. These boards either regulate animal care in the state or act in an advisory capacity to state authorities. For the boards that have promulgated written standards of care, most have codified the agriculture industry status quo. This is likely due in large part to the composition of the boards—most consist primarily of conventional industry representatives and do not include animal welfare specialists. (See Table 3, page 15, for further details.)

Ohio created the Ohio Livestock Care Standards Board (OLCSB) in 2009 via an amendment to the state constitution.[171] The board has the authority to "establish standards governing the care and well-being of livestock and poultry in [the] state."[172] However, an underlying goal for creating the board was to stop animal advocacy organizations from achieving farm animal care standards through legislation or ballot initiative.[173] The OLCSB has set livestock care standards that, in many respects, do not stray far from industry standards. For example, physical alterations can be performed without pain medication, and euthanasia practices include blunt force trauma, electrocution, and gun shot.[174] There has been slight progress with respect to species-specific regulations: Veal crates and tail docking of dairy cattle were phased out at the end of 2017, and gestation crates will be phased out by 2025. In addition, new egg farms are not permitted to use conventional battery cage systems.[175]

In 2010, several other states created livestock boards, or gave existing authorities power over all animal care standards. For example, Vermont created the Livestock Care Standards Advisory Council (LCSAC), consisting mostly of members representing the agriculture industry.[176] However, the LCSAC does provide a seat for a member with experience in investigating animal cruelty, and another for a representative of a local humane society.[177] The addition of these seats would seem to increase the potential that adequate standards for animal care could be implemented; however, the board only acts in an advisory capacity, and animal welfare advocates are still a minority among board members.[178] Since taking effect in 2010, the board has held several meetings and published position statements on some of the more egregious farming practices. In 2015 and 2016, the board wrote transportation guidelines for cattle and newborn calves that also provide cursory on-farm recommendations.[179]

Unfortunately, LCSAC positions often align with industry standards. For example, in 2012 the council recommended a "no" vote on S. 107, a bill prohibiting tail docking on horses and bovine unless performed by a veterinarian,[180] stating, "It is the overall consensus of the Council that criminalizing the act of tail docking or the owners of animals with docked tails is not the best way to effect change within the Vermont dairy industry."[181] Consequently, the bill was never enacted.[182] When the Vermont House Committee on Agriculture requested the council's position on the use of gestation crates, it recommended that during gestation, sows be kept in a manner that allows them to "turn around freely, lie down, stand up, and fully extend their limbs." However, this statement was qualified by the recommendation that "the use of crates for limited restraint of swine for purposes of feeding, breeding, handling, farrowing and disease control be permitted [and] the Council does not support an outright ban on gestation crates."[183]

Utah and Kentucky also created advisory livestock care boards in 2010. Kentucky's Livestock Care Standards Commission advises the Board of Agriculture on standards "governing the care and well-being of on-farm livestock and poultry."[184] Kentucky published final regulations in 2014.[185] They require that veal calves be raised in group housing by 2017.[186] However, they allow for nonambulatory animals to be shipped to slaughter and mutilations to be performed without anesthesia and at any age.[187] Utah created its agriculture advisory board in 1979; in 2010, the Utah Legislature authorized the board to advise the agriculture commissioner on the standards of care for farm animals.[188] Utah has not produced animal care regulations as of the writing of this text.

Illinois and West Virginia also created livestock care boards in 2010. In Illinois, the Department of Agriculture must submit rules and regulations pertaining to the "well-being of domestic animals and poultry" to the state's Advisory Board of Livestock Commissioners for approval.[189] However, to date the advisory board has not yet approved standards for on-farm treatment of animals. West Virginia's board must establish animal care standards for livestock, including determining agriculture best management practices for farm animals, which then must be approved by the state legislature.[190] In 2014, West Virginia wrote minimal animal care standards, which allow for nonambulatory animals to suffer indefinitely and do not require pain relief for physical alterations.[191]

Indiana took another route, and in 2011 gave the existing Board of Animal Health (BOAH) the discretionary authority to adopt rules governing the care of livestock and poultry.[192] This legislation came about because agriculture industry groups feared animal advocates would try to push for strong animal care standards in the state, as they had a few years earlier in neighboring Michigan. The Indiana Farm Bureau's director of state government relations, Bob Craft, stated, "[the Indiana Farm Bureau] support[s] this legislation so that what happened in Michigan will not happen in Indiana."[193]

In Michigan, animal advocacy groups had threatened to get legislation enacted through a state ballot measure to improve the lives of farm animals.[194] To avoid a fight at the ballot box, the animal agriculture industry came to an agreement with animal advocates to instead pass legislation limiting the use of battery cages for egg-laying hens, gestation crates for pregnant sows, and veal crates for young calves.[195]

The Indiana livestock care statute listed factors BOAH can consider when promulgating rules, none of which directly reference animal welfare.[196] The regulations require caretakers to provide "animals with an environment that can reasonably be expected to maintain the health of animals of that species, breed, sex, and age, raised using applicable production methods."[197] Several other sections in the regulations provide similarly vague statements, allowing for broad interpretations of the rules and reliance on conventional industry practices.[198]

The Rhode Island Legislature created a livestock advisory board in 2012 to help the state agriculture department review and evaluate laws and rules relating to agriculture best management practices and the overall health and welfare of livestock—a purpose that departs from other livestock boards.[199]The board is responsible for defining an "adequate living condition" for livestock, which it did on July 1, 2014. According to Rhode Island State Veterinarian Scott Marshall, these standards help law enforcement determine what constitutes an "adequate living condition." Persons not in compliance with the standards can be charged with animal cruelty.

The *Livestock Welfare and Care Standards* adopted by the Rhode Island board are similar to those set in Ohio. The standards provide that dairy cattle kept in tie stalls must be given the opportunity to exercise and enough room to stand up, lie down, eat, drink, defecate, and urinate comfortably.[200] For beef cattle, pain management must be used if dehorning occurs after eruption.[201] Additionally, calves with navels that have not dried after birth cannot be transported to a slaughterhouse, a market, or collection facility.[202] These are movements in the right direction. However, there are several other provisions in the document that are paltry and vague. For example, castration of pigs should be done at "as young an age as is practical," but if done on "older and larger boars" pain management must be used. Unfortunately, there is no definition for "older and larger boars."[203]

In Louisiana, the Board of Animal Health is responsible for adopting standards applicable to the care of farm animals, subject to the approval of the Department of Agriculture and Forestry commissioner.[204] The same law that provides for this process also prohibits municipalities and other local governments from adopting their own regulations pertaining to the care of farm animals.[205] Local governments can request to amend the standards to provide for specific problems within their geographic area, however.[206]

In 2013, Louisiana's Board of Animal Health adopted animal care standards with the commissioner's approval. The standards are broad and leave a significant amount of room for interpretation. For example, regulations read: "Livestock personnel shall have the proper level of knowledge, ability, and competency to maintain the health and care and well-being of livestock as specified in this Code."[207] There is no definition within the regulations for "proper level," or "ability, and competency."

Some of the species-specific standards in Louisiana allow for extreme confinement and mutilation of animals. Sows, for example, can be kept in gestation crates and farrowing stalls. The standards specify that sows must be able to get up and lie down at will and, when standing, touch only one side of the enclosure; the ability to turn around is not a requirement, however.[208] The poultry standards codify the National Chicken Council's stocking density, which currently allows for up to 9.0 pounds per square foot.[209] Mutilations such as beak trimming, tail docking, and claw removal can be performed without anesthesia, but must be performed within a certain number of days after the animal is born.[210]

In sum, livestock boards have the power to enrich the lives of farm animals, but they also have the power to maintain the status quo, which is generally what they've done thus far. However, in a very few instances they have implemented standards that (after their effective dates) will elevate farm animal welfare within the state, as in the limits placed by Ohio's board on the use of gestation crates and veal crates and the practice of docking the tails of dairy cattle.

TABLE 3. STATE LIVESTOCK BOARDS

State	Board Name	Obligated to Write Animal Care Standards?	Animal Welfare Board Member?	Standards Written?
Illinois	Advisory Board of Livestock Commissioners	No	No	No
Indiana	Board of Animal Health	No	No	Yes, 345 Ind. Admin. Code 14-2-1-14-2-5
Kentucky	Livestock Care Standards Commission	No	No	Yes, 302 Ky. Admin. Regs. 21:001-080
Louisiana	Board of Animal Health	Yes	No	Yes, La. Admin. Code tit. 7, § 3101-3117
Ohio	Ohio Livestock Care Standards Board	No[A]	Yes[B]	Yes, Ohio Admin. Code 901:12-1-15
Rhode Island	Livestock Welfare and Care Standards Advisory Council	No	Yes	Yes, but not codified as of 2014
Utah	Agriculture Advisory Board	No[C]	No	No
Vermont	Livestock Care Standards Advisory Council	No	Yes[D]	Yes[E]
West Virginia	Livestock Care Standards Board	Yes	Yes[F]	Yes

A. "The Board shall have authority to establish standards governing the care and well-being of livestock and poultry in this state, subject to the authority of the General Assembly."
B. One member representing a county humane society that is organized under state law.
C. Obligated to advise on establishment of standards governing the care of livestock and poultry.
D. A person with experience investigating charges of animal cruelty involving livestock and a representative of a local humane society or organization.
E. The board wrote transportation guidelines (with minimal on-farm recommendations) for newborn calves in 2015, and has provided other superficial recommendations.
F. One member representing a county humane society that is organized under state law.

INDUSTRY STANDARDS

Advances for farm animal welfare have also been made through changing the policies of industry trade associations. Animal advocacy organizations push industry associations—along with retailers and individual producers—to phase out the worst animal husbandry practices. For instance, in 2007 Strauss Veal and March Farms, two of the largest veal producers in the United States, pledged to go crate-free within two years.[211] Soon after, the American Veal Association (AVA) encouraged all veal producers to go crate-free by 2017.[212] In January 2018, the AVA announced that all member companies had completed this transition.[213] Similarly, in 2013, the National Milk Producers Federation recommended that tail docking of dairy cattle be phased out by 2022.[214] Two years later, it moved up the phase-out date to 2017 at the request of dairy retailers.[215] The first industry trade association to limit a conventional animal husbandry practice was United Egg Producers, which in 2002 amended its animal care guidelines pertaining to acceptable methods of forcing hens to molt.[216] It prohibited water- and feed-withdrawal molting methods and required that lighting periods be at least eight hours in length.[217] These industry-initiated phase-outs of conventional practices are merely voluntary, however, and the percent of producers complying with the recommendations is unknown.

While the industry is making self-imposed changes, retail food companies such as Wendy's, The Cheesecake Factory, Safeway, Papa John's Pizza, and Target pressure the industry to modify their practices incrementally as well. These companies, along with others, have announced that they will not buy pork products from producers using gestation crates after a phase-in period. In fact, in 2013 Safeway announced that its entire eastern division of pork supply had eliminated gestation crates.[218] Retailers are also pushing the industry to move toward cage-free systems for egg-laying hens. Numerous companies have made cage-free commitments. In fact, if the companies

that have already made commitments stick to them, over 60 percent of eggs will come from cage-free hens by 2025.[219]

Extreme confinement has been the main target when pressuring companies to improve how they treat animals raised for food. Other areas have received some attention, however. In 2013, Tyson announced that its contract farmers can no longer euthanize sick or injured piglets by blunt force, which includes slamming their heads into the ground.[220] This was the only new requirement announced by Tyson at the time, but the company also urged its farmers to use pain mitigation for tail docking and castration of piglets and to use video monitoring in barns, as well.[221] Additionally, many companies are committing to better welfare practices for broiler chickens. These include environmental enrichments, more space, and a switch to slower-growing breeds (that are not as subject to health issues).[222]

INTERNATIONAL STANDARDS

The World Organisation for Animal Health (known by its French abbreviation, "OIE") is an intergovernmental organization made up of 180 member states. Since 2005 the organization has adopted 11 sets of farm animal welfare standards, which cover transport by land, sea, and air; transport of farmed fish; the slaughter process; killing of animals for disease control purposes; and the welfare of animals in beef, dairy, and broiler production systems.[223] The OIE intends to produce standards to cover the on-farm treatment of other species, including pigs, and laying hens.

In the United States, interested stakeholders have the opportunity to participate in the OIE standards-setting process through submitting comments on proposed animal welfare standards to the USDA Veterinary Services. Veterinary Services in turn submits comments on behalf of the United States to the OIE. Stakeholders, including animal welfare organizations, have had some success in influencing USDA submissions over the past few years. To date, the USDA has failed to implement most OIE standards in regulation or to recommend statutory amendments to Congress. Consequently, the United States is not in compliance with OIE standards in many aspects of farm animal welfare.

Several countries have taken steps to implement OIE standards. This includes both national regulations and industry-recommended codes of practice. For example, in 2013 Canada's National Farm Animal Care Council published the *Code of Practice for the Care and Handling of Beef Cattle*.[224] The document covers both recommended and required practices, which may be enforceable under national and provincial regulation in Canada. The code for beef cattle is generally consistent with the OIE standards for the welfare of animals in beef production systems.

Unlike the United States, many developed countries have enacted comprehensive regulations and/or industry best practices to address the welfare of animals raised for food. As mentioned above, Canada has enacted a comprehensive code of practice for beef cattle. In recent years it also published revised standards for the raising of pigs and revised standards for egg-laying hens.[225] The pig standards phase out the use of gestation crates.[226] As of July 1, 2014, all new installation and replacement of existing individual stalls must allow sows to stand up without touching both sides of their stalls and to lie down.[227] By 2024, all sows and gilts must be housed in groups, individual pens, or stalls, provided the stalls allow them to turn around or get periodic exercise (to be defined in more detail by 2019).[228] In addition to addressing confinement housing, the code requires environmental enrichment for pigs[229] and the use of analgesics for the castration[230] and tail docking[231] of pigs.

OTHER REPORTS IN THIS SERIES:

Legal Protections for Farm Animals During Transport

Legal Protections for Nonambulatory (or "Downed") Farm Animals

Legal Protections for Farm Animals at Slaughter

[1] For a detailed review of legal protections related to transport to slaughter, please *see* Animal Welfare Inst., Legal Protections for Farm Animals During Transport (2017), available at https://awionline.org/sites/default/files/uploads/documents/fa-legalprotectionsduringtransport-12262013.pdf.

[2] *See* 7 U.S.C. § 1902 (1978) (limiting the humane slaughter laws to "cattle, calves, horses, mules, sheep, swine, and other livestock" which, has not been interpreted to include poultry); *see also* Clay v. N.Y. Cent. R. Co., 224 A.D. 508, 511-512 (App. Div. 1928)(holding that the Twenty-Eight Hour Law applies only to "cattle, sheep, swine, and other animals" but, does not apply to poultry).

[3] Bruce Wagman et al., Animal Law: Cases and Materials 420 (4th ed. 2009).

[4] Transportation, Sale, and Handling of Certain Animals, 7 U.S.C. §§ 2131-2159 (1966) (otherwise known as the Animal Welfare Act).

[5] Veal Calf Protection Act, H.R. 84, 101st Cong. (1989).

[6] *Id.; see also Actions Overview H.R.84—101st Congress (1989-1990)*, Congress.gov, https://www.congress.gov/bill/101st-congress/house-bill/84/actions (last visited June 23, 2017) (indicating that the bill was introduced to the House on January 1, 1989, but did not go to a vote).

[7] Farm Animals Anti-Cruelty Act, H.R. 6202, 110th Cong. (2008).

[8] Prevention of Farm Animal Cruelty Act, H.R. 4733, 111th Cong. (2010).

[9] *See Cosponsors: H.R.4733—111th Congress (2009-2010)*, Congress.gov, https://www.congress.gov/bill/111th-congress/house-bill/4733/cosponsors (last visited June 23, 2017) (listing the forty cosponsors of the Bill); *see also All Actions H.R. 4733—111th Congress (2009-2010)*, Congress.gov, https://www.congress.gov/bill/111th-congress/house-bill/4733/all-actions (last visited June 23, 2017) (indicating that the bill was not given a hearing before a subcommittee).

[10] Egg Products Inspection Act Amendments of 2013, H.R. 1731, 113th Cong. (2013).

[11] *Id.*

[12] *See* Agricultural Act of 2014, H.R. 2642, 113th Cong. (2014). Additionally, the two driving forces behind the bill, United Egg Producers and The Humane Society of the United States, ended their agreement to work on this legislation together. UEP will cease working to pass national cage standards altogether.

[13] *See* Cynthia Brougher, Cong. Research Serv. R40577, USDA Authority to Regulate On-farm Activity 1-2 (2009)(explaining that the AHPA delegates to APHIS the authority to regulate on-farm activities as a matter of animal health).

[14] 7 U.S.C. § 8301 (2002).

[15] 7 U.S.C. § 8308 (2008).

[16] Elanor Starmer, *Supporting Organic Integrity with Clear Livestock and Poultry Standards*, U.S. Dep't Agric. (Jan. 18, 2017), https://www.usda.gov/media/blog/2017/01/18/supporting-organic-integrity-clear-livestock-and-poultry-standards.

[17] Agric. Mktg. Serv., *Organic Livestock and Poultry Practices*, U.S. Dep't Agric., https://www.ams.usda.gov/rules-regulations/organic-livestock-and-poultry-practices (last visited June 23, 2017).

[18] *Id.*

[19] *Id.*

[20] Center for Environmental Health et al v. Perdue et al, Docket No. 3:18-cv-01763 (N.D. Cal. Mar 21, 2018); Organic Trade Association v. U.S. Dep't of Agric. et al, Docket No. 1:17-cv-01875 (D.D.C. Sept 13, 2017).

[21] *Id.*

[22] *Id.*

[23] Agric. Mktg. Serv., *Organic Livestock and Poultry Practices Second Proposed Rule*, U.S. Dep't Agric., https://www.ams.usda.gov/rules-regulations/national-organic-program-organic-livestock-and-poultry-practices-second-proposed (last visited June 23, 2017).

[24] Del. Code Ann. tit.11, § 1325 (2016); Iowa Code § 717B.1 (2013).

[25] For an example, *see* Cal. Penal Code §599b (2003).

[26] In an undercover investigation, farm employees were caught performing such heinous acts on dairy calves and cows. *See* Mercy for Animals, *Ohio Dairy Farm Brutality*, YouTube (May 25, 2010), https://www.youtube.com/watch?v=gYTkM1OHFQg; *see also* Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 Animal L. 69, 77-76 (1999)(explaining the state exemptions for livestock).

[27] Neb. Rev. Stat. §§ 54-901 to 54-913 (2013); Iowa Code §§ 717.1-717.6 (2011); Tex. Penal Code Ann. § 42.09 (2007).

[28] Neb. Rev. Stat. §§ 54-902, 54-903, 54-907 (2013).

[29] Neb. Rev. Stat. § 54-909 (2010).

[30] Iowa Code §§ 717.1-717.6 (2011).

[31] Tex. Penal Code Ann. § 42.09 (2007).

[32] *Compare* Wyo. Stat. Ann. §§ 11-29-101 to 11-29-115 (2011); *with* Wyo. Stat. Ann. § 6-3-203 (2017).

[33] N.J. Stat. Ann. § 4:22-16.1 (1996).

[34] New Jersey Soc'y for Prevention of Cruelty to Animals v. New Jersey Dep't of Agric., 196 N.J. 366, 402 (N.J. Sup. Ct. 2008).

[35] *Id.*

[36] *Id.* at 396.

[37] *Id.* at 371.

[38] *Id.* at 404.

[39] The regulations stated that de-beaking and castration could be performed "in a sanitary manner by a knowledgeable individual and in such a way as to minimize [the animals'] pain." The court concluded that while the husbandry practices could be done humanely, the language referring to a "sanitary manner," "knowledgeable individual," and "minimiz[ing] pain," were not enough to show the procedures would be done humanely because they were not clearly defined. *Id.* at 409-410.

[40] N.J. Admin. Code § 2:8-2.6 (2012).

[41] N.J. Admin. Code § 2:8-4.7(e)-(f)(2012) (incorporating the definition of a "knowledgeable person" from the Fed'n of Animal Sci. Societies, Guide for the Care and Use of Agricultural Animals in Research and Teaching (3rd ed. 2010), and Richard A. Battaglia, Handbook of Livestock Management (4th ed. 2006).

[42] *See* N.C. Gen. Stat. §§ 19A (1995).

[43] N.C. Gen. Stat. § 19A-2 (1995).

[44] N.C. Gen. Stat. § 19A-4 (1979).

[45] N.C. Gen. Stat. § 19A-1.1 (1995).

[46] Several of the exemptions found within these statutes are narrow in scope. For example under Virginia's cruelty code, the exemption only applies to the dehorning of cattle conducted in a reasonable and customary manner.

[47] *See* Neb. Rev. Stat. § 28-1009 (2015)(limiting the anti-cruelty statute to apply only those species included within the definition of "animal" under the code); *see also* Neb. Rev. Stat. §28-1008 (2015) (excluding livestock from the definition for "animal").

[48] *See* Ohio Rev. Code Ann. § 959.131(A)(1) (2016) (excluding livestock from the definition of companion animal); Ohio Rev. Code Ann. § 959.131(B)-(C) (prohibiting intentional harm to companion animals);*see also* Ohio Rev. Code Ann. §959.99 (2017) (making it a felony to knowingly harm a companion animal).

[49] 18 Pa. Cons. Stat. §§ 5511(a)(i), (a)(2.1)(ii) (2015).

[50] Utah Code Ann. § 76-9-301(6) (2015).

[51] Or. Rev. Stat. § 167.335(1-11) (2015).

[52] Cheryl L. Leahy, *Large-Scale Farmed Animal Abuse and Neglect: Law and its Enforcement*, 4 J. Animal L. & Ethics 63, 63-132 (2011); *See Investigation of North Carolina Pig Farm Results in Historic Felony Cruelty Convictions*, PETA (April 2000), http://www.peta.org/about-peta/victories/investigation-north-carolina-pig-farm-results-historic-felony-cruelty-convictions/#ixzz2qaxJNeVv (last visited June 23, 2017).

[53] Leahy, *supra* note 50, at 81.

[54] *Id.* at 82.

[55] *Id.* at 84.

[56] *Id.* at 85.

[57] For example, after a 2014 undercover investigation, where animals were buried alive, the county officials decided they would not prosecute under the state cruelty law. S*ee COK Investigation Update: Burying Birds Alive is Apparently Not a Crime in North Carolina*, Compassion Over Killing (August 5, 2014), http://cok.net/blog/2014/08/cok-investigation-update-burying-birds-alive-apparently-crime-north-carolina/.

[58] Cal. Health & Safety Code §§ 25980-25984 (2011).

[59] *Id.*; *See* Association Des Eleveurs de Carnards et D'oies du Quebec v. Harris, 729 F.3d 937 (9th Cir. 2013).

[60] Association Des Eleveurs de Carnards et D'oies du Quebec v. Harris, 79 F.Supp.3d 1136 (C.D. Cal. 2015).

[61] Ass'n des Éleveurs de Canards et d'Oies du Quebec v. Becerra, 870 F.3d 1140 (9th Cir. 2017) (pending petition for cert. to the United States Supreme Court)

[62] *See* Animal Legal Def. Fund v. Aubertine, 119 A.D.4d 1202 (N.Y. App. Div. 2014) (holding that the residents and corporations did not have standing to bring the action against the foie gras producers).

[63] Nick Fox, *Chicago Overturns Foie Gras Ban*, N.Y. Times (May 14, 2008, 3:33 PM), http://dinersjournal.blogs.nytimes.com/2008/05/14/chicago-overturns-foie-gras-ban/?hp.

[64] Alaska Stat. § 03.55.100 (2004).

[65] *Status of Animal Care Standards*, DEC St. Veterinarian, http://dec.alaska.gov/eh/vet/AnimalCareWorkshop.html (last visited June 23, 2017).

[66] Or. Rev. Stat. § 600.150(2) (2008).

[67] *Id.*

[68] *Oregon Legislative Information System, 2007 Regular Session: SB 69*, Or. St. Legis., https://olis.leg.state.or.us/liz/2007R1/Measures/Overview/SB694 (last visited June 23, 2017); *Oregon's Governor Signs Gestation Ban into Law*, Pork Network (Jan. 18, 2011, 1:13 AM), http://www.porknetwork.com/pork-news/oregons-governor-signs-gestation-sow-crate-ban-into-law-114062169.html.

[69] Or. Rev. Stat. § 600.150(2)(2008).

[70] Colo. Rev. Stat. Ann. § 35-50.5-102 (2008).

[71] *Id.*

[72] Colo. Rev. Stat. Ann. § 35-50.5-102(1)(b)(2008).

[73] Colo. Rev. Stat. Ann. § 18-1.3-501 (2015).

[74] Ariz. Rev. Stat. Ann. § 3-710 (2011).

[75] *Id.*

[76] Ariz. Admin. Code § R3-2-907 (2009)

[77] *Id.*; *see also* United Egg Producers, Animal Husbandry Guidelines for U.S. Egg Laying Flocks (2008). UEP has since updated its *Husbandry Guidelines*, however the space allotment has not changed, remaining at 67-86 square inches per bird. *See* United Egg Producers, Animal Husbandry Guidelines (2016)

[78] Az. Admin. Code § R3-2-907 (2009).

[79] *Id.*

[80] Me. Rev. Stat. tit. 7, § 4020 (2009).

[81] Me. Rev. Stat. tit. 7, § 4016(A) (2008).

[82] Mich. Comp. Laws Ann. § 287.746 (2010).

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] H.B. 5127, 95th Leg., Reg. Sess. (Mich. 2009), http://www.legislature.mi.gov/documents/2009-2010/billintroduced/House/pdf/2009-HIB-5127.pdf; H.B. 5128, 95th Leg., Reg. Sess. (Mich. 2009), http://www.legislature.mi.gov/documents/2009-2010/billintroduced/House/pdf/2009-HIB-5128.pdf.

[87] *House Bill 5127 (2009)*, Mich. Legislature, http://www.legislature.mi.gov/(S(qapb5qojihf3bxwv4rop12t3))/mileg.aspx?page=getObject&objectName=2009-HB-5127 (last visited June 26, 2017).

[88] Cal. Penal Code § 597n (2010).

[89] L.D. 692, 124th Leg., 1st Reg. Sess. (Me. 2009), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/RESOLVE63.pdf.

[90] *See* Mercy for Animals, *New England Egg Farm Investigation*, YouTube (Mar. 24, 2009), https://www.youtube.com/watch?v=1dOauM9LNTc.

[91] Office of the State Veterinarian, Main Dep't of Agric., Conservation & Forestry, State of Maine Best Management Practices (BMP's) for Poultry Facilities of More than 10,000 Birds (2010).

[92] Cal. Health & Safety Code §§ 25995-25997.1 (2011).

[93] Cal. Health & Safety Code §§ 25990-25994 (2015).

[94] *See* Cal Health & Safety Code § 25996 (2014) (implementing a sales ban on eggs sold within the state that fail to comply with the codes requirements).

[95] Cal. Health & Safety Code § 25996.1 (2016).

[96] Cal. Code Regs. tit. 3, § 1350.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] Egg-producers from Missouri, Nebraska, Oklahoma, Alabama, Kentucky, and Iowa challenged the law based on the *parens patriae* doctrine, claiming that each state had a "quasi-sovereign interest[] in protecting its citizens economic health and constitutional rights, as well as preserving its own rightful status within the federal system." *See* Missouri v. Harris, 58 F.Supp.3d 1059, 1064 (E.D. Cal. 2014).

[101] *Id.* at 1065-1066.

[102] The court denied standing because, while the states could assert a hypothetical injury to their egg producers, the injury could not extend to all the citizens as a whole. *Id.* at 1072-1075.

[103] Missouri v. Harris, 847 F.3d 646, 653-655 (9th Cir. 2017).

[104] *Supreme Court Rejects Challenge to California's Landmark Egg Sales Ban*, Humane Soc'y U.S. (May 30, 2017), http://www.humanesociety.org/news/press_releases/2017/05/supreme-court-upholds-ca-egg-law-053017.html.

[105] Wayne Pacelle, *Breaking News: First-Ever Criminal Charges Brought Against Egg Producer for Violating California Prop 2*, Humane Soc'y U.S.: A Humane Nation (Feb. 7, 2017), http://blog.humanesociety.org/wayne/2017/02/breaking-news-first-ever-criminal-charges-brought-egg-producer-violating-california-prop-2.html?credit=blog_post_020717_id8769.

[106] *Id.*

[107] Or. Rev. Stat. § 632.840 (2011).

[108] Or. Rev. Stat. § 632.850 (2011).

[109] Or. Rev. Stat. § 632.840 (2011).

[110] Farm Animal Program, Am. Humane Ass'n, American Welfare Standards for Layers- Enriched Colony Housing (2012) (*revised* 2015).

[111] Or. Rev. Stat. § 632.840 (2011); *see also Cage Requirements*, Oregon.gov, http://www.oregon.gov/ODA/shared/Documents/Publications/InternalServices/EggLayingHenCageRequirements.pdf (last visited June 26, 2017) (detailing the phase-in schedule for Oregon's egg-laying hens).

[112] This will likely include requirements for nest boxes, perches, and litter material that allows for dust bathing and scratching.

[113] Wash. Rev. Code § 69.25.065 (2012).

[114] *Id.*

[115] Wash. Rev. Code § 69.25.107 (2012).

[116] 4 R.I. Gen. Laws Ann. §§ 4-1.1-3., 4-1-6.1 (2012).

[117] 4 R.I. Gen. Laws Ann. § 4-1-6.1.

[118] *Id.*

[119] 4 R.I. Gen. Laws Ann. § 4-1-1 (2018).

[120] For examples of these exemptions, *see* Or. Rev. Stat. § 600.150 (2008) (regulating the restrictive confinement of a pregnant pig); Colo. Rev. Stat. Ann. § 35-50.5-102 (2008) (providing exemptions for the confinement of calves raised for veal and pregnant sows); Me. Rev. Stat. Ann. tit. 7, § 4020 (2009) (creating exceptions for the cruel confinement of calves raised for veal and sows during gestation).

[121] *See* Nat'l Dairy Farm Program, Nat'l Milk Producers Federation, Animal Care reference Manual 10 (2016) (phasing out tail docking by January 1, 2017); *see also American Veal Association Resolution*, Am. Veal Ass'n (May 9, 2007), https://static1.squarespace.com/static/56b1263940261d30708d14b4/t/56be130327d4bdc613a7777a/1455297284477/GRP_HOUSING_RESOL1-0507.pdf (requiring the transition from veal crates to group housing conditions by December 31, 2017) [hereinafter *Veal Resolution*].

[122] *See* Wash. Rev. Code § 69.25.107 (2012) (requiring "access to areas for nesting, scratching, and perching").

[123] Iowa Code § 135.16A (2018).

[124] Initiative & referendum Inst., *State I&R*, U.S. Cal., http://www.iandrinstitute.org/states.cfm (last visited August 17, 2018).

[125] *Initiative and Referendum History – Animal Protection Issues*, Humane Soc'y U.S., http://www.humanesociety.org/assets/pdfs/legislation/ballot_initiatives_chart.pdf (last visited June 26, 2017).

[126] *Id.*

[127] *See Florida's Historic Ban on Gestation Crates*, Animal Rights Found. Fla., http://arff.org/gestation-crates (last visited June 26, 2017) (explaining that after volunteers gathered over 600,000 signatures from registered voters, the initiative to prohibit the cruel confinement of sows was put on the 2002 ballot).

[128] *Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy*, Fla. St. Dep't http://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/5/2002&RACE=A10&PARTY=&DIST=&GRP=&DATAMODE= (last visited June 26, 2017).

[129] Fla. Const. art. X, § 21.

[130] *Id.*; Fla. Stat. Ann. § 775.082(4)(a) (2017).

[131] Fla. Const. art. X, § 21(d).

[132] *See* St. of Ariz. Official Canvas: 2006 General Election, 15 (2006), http://apps.azsos.gov/election/2006/General/Canvass2006GE.pdf.

[133] Ariz. rev. Stat. § 13-2910.07 (2012).

[134] Nat'l Agric. Statistics Serv., U.S. Dep't of Agric, Hogs and Pigs 13 (2007), http://usda.mannlib.cornell.edu/usda/nass/HogsPigs//2000s/2007/HogsPigs-12-27-2007.pdf.

[135] Ariz. Rev. Stat. § 13-2910.08.

[136] *Id.*

[137] *Id.*

[138] *See California Proposition 2, Standard for Confining Farm Animals (2008)*, Ballotpedia.org, https://ballotpedia.org/California_Proposition_2,_Standards_for_Confining_Farm_Animals_(2008) (laying out the elements and impacts of Proposition 2).

[139] *Id.*; *see also* Jonathan R. Lovvorn & Nancy V. Perry, *California Proposition 2: A Watershed Moment for Animal Law*, 15 Animal L. 149, 167 (2009).

[140] Tracie Cone, *Westland/Hallmark Meat Settlement Reached After Major Meat Recall*, Associated Press (Nov. 16, 2012), *reprinted in* The San Diego Tribune (Nov. 16, 2012), http://www.sandiegouniontribune.com/.

[141] Cal. Health & Safety Code § 25990 (2015).

[142] *Id.*

[143] *California Department of Food and Agriculture Egg Safety Rule Questions and Answers*, Cal. Dep't Food & Agric., https://www.cdfa.ca.gov/ahfss/mpes/pdfs/EggSafetyRuleQA.pdf (last visited June 26, 2017) (showing that the California Department of Agriculture finds the 116 square inch requirement to be "harmonious" with §§ 25-990-25994 of the California Health and Safety Code); *see also About Cage-Free California*, Humane Soc'y U.S., http://cagefreeca.com/ (last visited June 26, 2017).

[144] Cal. Health & Safety Code § 25993 (2015).

[145] *Massachusetts Minimum Size Requirements for Farm Animal Confinement Question 3 (2016)*, Ballotpedia, https://ballotpedia.org/Massachusetts_Minimum_Size_Requirements_for_Farm_Animal_Containment,_Question_3_(2016) (last visited July 17, 2017) [hereinafter Massachusetts Question 3].

[146] *Id.*

[147] *Id.*

[148] Shira Schoenberg, *Mass. Supreme Judicial Court Upholds Farm Animal Ballot Question Banning 'Extreme Confinement*, MassLive (July 6, 2016, 1:17 PM), http://www.masslive.com/politics/index.ssf/2016/07/sjc_upholds_farm_animal_ballot.html.

[149] *Massachusetts Question* 3, *supra* note 142.

[150] Miller, *supra* note 117.

[151] *Massachusetts Question* 3, *supra* note 142.

[152] Marsha Laux, *Egg Profile*, Agric. Marketing Resource Ctr., http://www.agmrc.org/commodities__products/livestock/poultry/eggs-profile/ (last visited June 27, 2017).

[153] Nat'l Agric. Statistics Serv., U.S. Dep't of Agric., Livestock Slaughter 2012 Summary (2013), http://usda.mannlib.cornell.edu/usda/nass/LiveSlauSu//2010s/2013/LiveSlauSu-04-22-2013.pdf (explaining that Iowa produced 6,638.2 million pounds, Kansas 5,274.2 million pounds, and Texas 5,013.9 million pounds).

[154] Kelly Madrone, *Big Ag Wants to Silence You*, Humane Soc'y U.S (Dec. 14, 2016), http://www.humanesociety.org/news/magazines/2017/01-02/big-ag-right-to-farm.html.

[155] *See* Mark Bittman, *Who Protects the Animals?*, N.Y. Times: Opinionator (April 26, 2011), https://opinionator.blogs.nytimes.com/2011/04/26/who-protects-the-animals/.

[156] Kan. Stat. Ann. § 47-1827 (2006) (stating that no person shall with the intent to damage the enterprise conducted at the animal facility, take pictures or video recordings); Mont. Code Ann. § 81-30-103 (1991) (stating that a person who does not have the consent of the owner, with the intent to damage the enterprise and to commit criminal defamation, may not enter a facility to take photos or video); N.D. Cent. Code § 12.1-21.1-02 (1991) (stating that no person shall, without the effective consent of the owner, enter an animal facility and use or attempt to use a camera or other recording equipment).

[157] Iowa Code § 717A.3A (2012).

[158] Utah Code Ann. § 76-6-112 (2012); Mo. Rev. Stat. § 578.013 (2012); A court decision is pending alleging the law violates the First Amendment, the Supremacy Clause, and the Fourteenth Amendment of the United States Constitution, see Animal Legal Def. Fund v. Herbert, No. 2:13CV00679, 2013 WL 4017889 (D. Utah 2013).

[159] Idaho Code § 18-7042 (2014) (held unconstitutional by *Animal Legal Defense Fund v. Otter*).

[160] An Act to Protect Property Owners From Damages Resulting From Individuals Acting in Excess of the Scope of Permissible Access and Conduct Granted to Them, ch. 99A, § 1, 2015 N.C. Sess. Laws 50 (codified as amended N.C. Gen. State. §§ 99A-1 to 99A-2), http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H405v5.pdf.

[161] H.B. 405, N.C. Gen. Assemb., 2015 Sess. (N.C. 2015) (ratified), http://www.ncleg.net/Applications/BillLookUp/LoadBillDocument.aspx?SessionCode=2015&DocNum=5076&SeqNum=0; *see also Ag-Gag Legislation by State*, ASPCA.org, https://www.aspca.org/animal-protection/public-policy/ag-gag-legislation-state (last visited June 27, 2017) (detailing the evolution of the North Carolina ag-gag legislation).

[162] *See* H.B. 1665, 91st Gen. Assemb., Reg. Sess. (Ark. 2017) (enacted).

[163] Dan Flynn, *Arkansas Lawmakers take 'Civil' Approach With New Ag-Gag Laws*, Food Safety News (March 24, 2017), http://www.foodsafetynews.com/2017/03/arkansas-lawmakers-take-civil-approach-with-new-ag-gag-law/#.WVKRdmpoyM8.

[164] *Id.*

[165] *See* Animal Legal Def. Fund v. Otter, 118 F.Supp. 1195, 1207-1208 (D. Idaho, 2015) (finding that Idaho failed to meet the constitutional test of strict scrutiny).

[166] Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018)

[167] Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193 (D. Utah 2017).

[168] Animal Legal Def. Fund v. Reynolds No. 4:17-cv-362 (S.D. Iowa Oct. 10, 2017).

[169] People for the Ethical Treatment of Animals, Inc. v. Stein, No. 17-1669, 2018 WL 2714684 (4th Cir. June 5, 2018).

[170] Ga. Code Ann. § 2-1-6 (2009); 2; Okl. Stat. tit. 2 § 2-4c (2009); S.C. Code Ann. § 47-4-160 (2009); Ala. Code § 2-15-5 (2010).

[171] Ohio Const. art. XIV, § 1.

[172] *Id.*

[173] Lindsay Vick, *Confined to a Process: the Preemptive Strike of Livestock Care Standards Boards in Farm Animal Welfare Regulation*, 18 Animal L. 151,154 (2011).

[174] Ohio Admin. Code 901:12-1-04 (2011) (allowing the use of physical methods of euthanasia for farm animals); Ohio Admin Code 4741-1-13 (2010) (permitting physical alterations of livestock); *see also* Ohio Admin. Code 901: 12-3-03(G) (2016) (requiring livestock management procedures be performed humanely).

[175] Ohio Admin Code 901:12-8 (2016); Ohio Admin. Code 901:12-5 (2016); Ohio Admin. Code 901:12-6 (2016).

[176] Vt. Stat. Ann. tit. 6, § 792 (2017).

[177] *Id.*

[178] *Id.*

[179] Livestock Care Standards Advisory Council, Transportation Guidelines for Cattle (2015), http://agriculture.vermont.gov/sites/ag/files/pdf/animal_health/Cattle%20Transport%20Website%20Final%20April%202016.pdf; Livestock Care Standards Advisory Council, Transportation Guidelines for Newborn Calves (2016), http://agriculture.vermont.gov/sites/ag/files/Calf%20Transport%20Website%20Material%20Final.pdf.

[180] Position Statement, Livestock Care Standards Advisory Council, Tail Docking Statement (Feb. 8, 2012), http://agriculture.vermont.gov/sites/ag/files/pdf/animal_health/Position%20Statement%20-%20tail%20docking%20-%20%202012.pdf.

[181] *Id.*

[182] *See* Vt. Gen. Assembly, *S. 107 An Act Relating to Docking the Tail of a Horse or Bovine*, Vermon.gov, http://legislature.vermont.gov/bill/status/2012/S.107 (last visited June 27, 2017) (indicating the history and current status of the bill).

[183] Position Statement, Livestock Care Standards Advisory Council, Use of Swine Gestation Crates (Jan. 10, 2013), http://agriculture.vermont.gov/sites/ag/files/pdf/animal_health/LCSAC%20swine%20gestation%20crate%20position%20statement%20January%202013.pdf.

[184] Ky. Rev. Stat. Ann. § 257.192 (2010).

[185] 302 Ky. Admin. Regs. 21:030 (2014).

[186] *Id.*

[187] *Id.*; 302 Ky. Admin. Regs. 21:020 (2014).

[188] Utah Code Ann. § 4-2-7 (2016).

[189] 20 Ill. Comp. Stat. 5/5-525 (2010).

[190] W. Va. Code § 19-1C-4 (2013).

[191] W. Va. Code §§ 73-1-1 to 73-1-21 (2016).

[192] Ind. Code Ann. § 15-17-3-23 (2011).

[193] *Livestock Bill Will See Action This Week at Indiana Statehouse*, Beef Magazine, (Feb. 16, 2010), http://beefmagazine.com/government/0217-livestock-bill-indiana-state.

[194] *See* Associated Press, *Farm-Animal Treatment Could be on Michigan's 2010 Ballot*, MLive (July 13, 2009, 12:40 PM), http://www.mlive.com/news/index.ssf/2009/07/farmanimal_treatment_could_be.html.

[195] Mich. Comp. Laws Ann. § 287.746 (2010).

[196] The factors are (1) the health and husbandry of the livestock and poultry, (2) generally accepted farm management practices, (3) generally accepted veterinary standards and practices, and (4) the economic impact the standards may have on livestock and poultry farmers, the affected livestock and poultry sector, and consumers. Ind. Code Ann. § 15-17-3-23.

[197] 345 Ind. Admin. Code 14-2-3 (2011).

[198] *See* 345 Ind. Admin. Code 14-2-5 (2011) (stating "A person handling, restraining, or transporting livestock or poultry must use methods and equipment that can reasonably be expected to prevent an injury that would endanger the life or health of animals of that species, breed, sex, and age, raised using the applicable production method").

[199] 4 R.I. Gen. Laws § 4-26-5 (2013); the board is differentiated from other livestock boards because it holds a seat for "a representative from a national nonprofit animal welfare entity."

[200] The R.I. Livestock Welfare & Care Standards Advisory Council, Livestock Welfare and Care Standards 13 (2014), http://www.dem.ri.gov/programs/bnatres/agricult/pdf/livestock_welfare_standards_2014.pdf.

[201] *Id.* at 14.

[202] *Id.* at 13.

[203] *Id.* at 16.

[204] La. Rev. Stat. § 3:2095.1 (2010).

[205] *Id.*

[206] *Id.*

[207] La. Admin. Code tit. 7, § 2103 (2017).

[208] *Id.* at § 2111.

[209] National Chicken Council, National Chicken Council Animal Welfare Guidelines and Audit Checklist for Broilers 9 (2014), http://www.nationalchickencouncil.org/wp-content/uploads/2015/08/NCC-Guidelines-Broilers-August2015.pdf.

[210] La. Admin. Code tit. 7, § 2111 (2017).

[211] *Strauss Veal and Marcho Farms Eliminating Confinement by Crate*, Humane Soc'y U.S. (Feb. 22, 2007), http://www.humanesociety.org/assets/pdfs/farm/strauss_veal_marcho_farms.pdf.

[212] *Veal Resolution*, *supra* note 119.

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