

2007–2008 LEGISLATIVE REVIEW

By
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REVIEW EDITOR'S NOTE

It is my pleasure to introduce the eleventh annual edition of *Animal Law's* Legislative Review. This review discusses the animal-related legislation that the federal and state legislatures considered during the 2007–2008 legislative sessions.

* © Nancy R. Hoffman and Robin C. McGinnis 2009. Ms. Hoffman and Ms. McGinnis are both second-year law students at Lewis & Clark Law School, and each has a lifelong concern for animal welfare. They also both earned their B.A. degrees from the University of California at Davis. Ms. Hoffman would like to thank her husband, Rich, for his loyal support and Jeff and Drew for their dedication to animal rights. Ms. McGinnis would like to thank her mother, Mary McGinnis, for always making anything seem possible. She would also like to thank her cats, Fletcher and Tenaya. Both authors would like to thank Legislative Review Editor Rita Yonkers for patiently guiding them through the process.

Ms. Nancy R. Hoffman reports on federal legislation from the 110th Congress, including proposed amendments to the Animal Welfare Act that would eliminate Class B dealers; the Chimp Haven is Home Act, which closes a loophole in the Chimpanzee Health Improvement, Maintenance and Protection Act (CHIMP Act) that allowed researchers to test on retired chimpanzees; the Great Ape Protection Act, which would prohibit invasive research on the great apes; the Agricultural Protection and Prosperity Act, which would exempt manure from consideration under the Comprehensive Environmental Response Compensation and Liability Act; and the Preservation of Antibiotics for Medical Treatment Act, which would eliminate the nontherapeutic use of certain antibiotics in animals produced for human consumption.

Reporting on state actions, Ms. Robin C. McGinnis covers recent state legislative developments, including laws that increase the penalties for persons engaged in animal fighting; laws that attempt to address the underlying mental illnesses that lead to animal hoarding; laws that protect companion animals and wildlife from antifreeze poisoning; laws that ban the practice of greyhound racing; and laws that regulate large scale dog breeding operations commonly known as puppy mills.

In addition to these important legislative developments at the state level, in November 2008, California voters passed Proposition 2, heralded as “the most important legislation for farm animals in U.S. history.”¹ Proposition 2 also made history by receiving more “yes” votes than any other citizen initiative in the history of the state of California.² Proposition 2 prohibits the use of farm animal confinements, such as gestation crates, veal crates, and battery cages, which are so small that the animal is unable to move around.³ Violations of the law constitute a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than 180 days, or both.⁴ For a thorough discussion of the campaign to get Proposition 2 passed, see *California Proposition 2: A Watershed Moment for Animal Law*.⁵

This review is intended to serve not only as a review of the legislative developments that occurred in the past year, but also as an educational tool for anyone interested in learning more about animal law issues. We hope that our analysis of this year’s legislative develop-

¹ Press Release, Humane Socy. U.S., *Californians Deliver Decisive Victory to Prevent Factory Farm Cruelty by Passing Proposition 2* (Nov. 5, 2008) (available at http://www.hsus.org/farm/news/pressrel/californians_deliver_decisive_victory_on_prop_2_110508.html) (last accessed Apr. 12, 2009).

² Press Release, Humane Socy. U.S., *Prop 2 is Most Popular Citizen Initiative in California History* (Dec. 8, 2008) (available at http://www.hsus.org/farm/news/pressrel/prop_2_12082008.html) (last accessed Apr. 12, 2009) (also noting that “[proposition] 2 won by a wider margin than [Barack] Obama’s landslide victory over [John] McCain in California”).

³ Cal. Health & Safety Code Ann. §§ 25990, 25991(d) (West 1999 & Supp. 2009).

⁴ *Id.* at § 25993.

⁵ Nancy V. Perry & Jonathan R. Lovvorn, *California Proposition 2: A Watershed Moment for Animal Law*, *supra* pp. 149–69.

ments provides readers with valuable information regarding the process of getting animal-related legislation passed and will help to assist the development of the field of animal law. As always, *Animal Law* welcomes any comments or suggestions for future editions of Legislative Review.

Rita D. Yonkers
Legislative Review Editor

I. FEDERAL LEGISLATION

The 110th Congress ended work on January 4, 2009. If legislators of the 111th Congress wish to consider any bills from the previous session, they must reintroduce those bills during the current session. While Congressional sponsors and active proponents may intend to pursue the same issues, as of this writing it is not known which bills the 111th Congress will consider again. The following discussion highlights legislation that was introduced during the 110th Congress, along with issues raised by supporters and opponents.

A. *Animals in Research*

1. *Pet Safety and Protection Act of 2007*

More than ten years ago, during the 104th Congress on September 24, 1996, Senator Daniel K. Akaka (D-HI) first introduced legislation proposing to amend the Animal Welfare Act (AWA) to ensure that all dogs and cats used by research facilities are obtained legally.⁶ Senator Akaka has introduced similar legislation during every subsequent Congress, all of which died in committee.⁷ This year he introduced Senate Bill 714 in conjunction with Representative Mike Doyle (D-PA) who introduced the companion measure, House Bill 1280.⁸

Research laboratories use many different kinds of animals, including domestic dogs and cats.⁹ These laboratories obtain dogs and cats either from Class A dealers that usually breed animals for research purposes, or from Class B dealers, otherwise known as “random

⁶ Sen. 2114, 104th Cong. (Sep. 24, 1996) (available at <http://thomas.loc.gov/bss/104search.html>; *select* Bill Number, *search* “s2114,” *select* Text of Legislation) (last accessed Apr. 12, 2009).

⁷ Off. Legis. Policy & Analysis, *Legislative Updates, Pet Safety and Protection Act of 2007*, Background, http://olpa.od.nih.gov/legislation/110/pendinglegislation/pet_safety_act.asp (last accessed Apr. 12, 2008).

⁸ Sen. 714, 110th Cong. (Feb. 28, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “s714,” *select* Text of Legislation) (last accessed Feb. 24, 2009); H.R. 1280, 110th Cong. (Mar. 1, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “hr1280,” *select* Text of Legislation) (last accessed Apr. 12, 2009).

⁹ Humane Socy. U.S., *Class B Dealers of Random Source Dogs and Cats: A White Paper Prepared by the Humane Society of the United States* (available at http://www.hsus.org/animals_in_research/class_b_dealers/class_b_dealers_of_random.html) (July 2007) (last accessed Apr. 12, 2009).

source” dealers.¹⁰ Licensed by the U.S. Department of Agriculture (USDA), Class B dealers obtain animals from a variety of sources including shelters, auctions, newspaper advertisements, and private parties—hence the term “random source.”¹¹ Researchers argue that they need dogs and cats obtained from random source dealers when genetic diversity or aging conditions including heart disease, orthopedic studies, and drug and therapy research are the subject of their studies.¹² Researchers also use random source dealers when animals are needed to train surgeons and to be research models because fewer and fewer animal shelters will release animals to these research facilities.¹³

Senator Akaka’s concern under the current AWA is that Class B dealers frequently violate the Act by obtaining the animals they sell to research facilities via questionable methods. Examples are responding to “free to good home” advertisements, obtaining animals from shelters, and even stealing animals left unattended by their owners.¹⁴ When he introduced the legislation, Senator Akaka stated that many random source dealers not only used “deceit and fraud” to obtain family pets, but they kept hundreds of animals “in squalid conditions with just enough food and water to keep them alive until sold.”¹⁵ For example, the USDA recently shut down a Class B dealer who had been operating for fifteen years in Arkansas, committing hundreds of AWA violations for extreme cruelty to animals and illegal acquisitions.¹⁶ By making funds unavailable to research facilities using Class B dealers, the legislation effectively prohibits procurement through all random source animal dealers.¹⁷

Supporters of the legislation are also concerned about “bunchers,” people operating without any USDA license, who gather stray and stolen animals and sell them to Class B dealers.¹⁸ The AWA requires that Class B dealers maintain documentation allowing the USDA to trace an animal back to its original owner, ensuring that it was intended for research.¹⁹ However, bunchers often provide fraudulent information making such trace backs impossible.²⁰ Senator Akaka noted that even though there are only seventeen remaining Class B dealers, hundreds of unregulated suppliers sell to those dealers.²¹

The legislation introduced by Senator Akaka and Representative Doyle would prohibit research facilities from purchasing animals from

¹⁰ *Id.*

¹¹ *Id.*

¹² Off. Legis. Policy & Analysis, *supra* n. 7.

¹³ *Id.*

¹⁴ Humane Socy. U.S., *supra* n. 9, at “Background.”

¹⁵ 153 Cong. Rec. S2365 (daily ed. Feb. 28, 2007).

¹⁶ 151 Cong. Rec. S10221 (daily ed. Sept. 20, 2005).

¹⁷ 153 Cong. Rec. at S2365.

¹⁸ Humane Socy. U.S., *supra* n. 9, at “Background.”

¹⁹ *Id.* at “Animal Welfare Concerns.”

²⁰ *Id.*

²¹ 151 Cong. Rec. at S10221.

Class B dealers.²² Instead, sources of research animal subjects would be limited to original breeders, publicly owned shelters, donations by people who have owned the animal for at least one year, and licensed research facilities.²³ Opponents of the legislation point out that many shelters no longer release animals to research facilities, thus eliminating sources of “outbred/mongrel” animals often needed in research.²⁴ The Humane Society of the United States (HSUS), however, argues that most research facilities have stopped using animals for which they lack genetic and health histories, such as random animals obtained from Class B dealers.²⁵ In addition, proponents of the legislation argue that if researchers need genetically diverse animals, they can still obtain them from Class A dealers and those shelters that continue to provide animals for research.²⁶

Senator Akaka’s most recent legislation was referred to the Committee on Agriculture, Nutrition, and Forestry on February 28, 2007, and Representative Doyle’s bill was referred to the Committee on Agriculture, with no further action occurring on either bill prior to the end of the session.²⁷ After twelve years of consideration, through six sessions of Congress, it might be expected that Senator Akaka will introduce similar legislation to the 111th Congress.

2. *Chimp Haven is Home Act (Amendment to the CHIMP Act)*

President George W. Bush signed the Chimp Haven is Home Act, an amendment to the Chimpanzee Health Improvement, Maintenance and Protection Act (CHIMP Act), into law in 2007.²⁸ In 2000, Congress passed and President Bill Clinton signed into law the CHIMP Act.²⁹ The CHIMP Act was designed to deal with an enormous surplus of chimpanzees that are housed in research facilities and are no longer used for research.³⁰

One cause of the surplus was a breeding program initiated by the National Institutes of Health in anticipation of testing AIDS vaccines on “our closest genetic kin.”³¹ However, researchers soon discovered that even though chimpanzees can contract HIV or AIDS, they do not

²² Sen. 714, 110th Cong. at § 7.

²³ *Id.*

²⁴ Off. of Legis. Policy & Analysis, *supra* n. 7.

²⁵ Humane Socy. U.S., *supra* n. 9, at “Impact on Biomedical Research of a Ban on Procurement from Class B Dealers.”

²⁶ *Id.*

²⁷ Sen. 714, 110th Cong.; H.R. 1280, 110th Cong. (Mar. 1, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “hr1280,” *select* Text of Legislation) (last accessed Apr. 12, 2009).

²⁸ Pub. L. No. 110-170, 121 Stat. 2465 (2007).

²⁹ 42 U.S.C. § 287a-3a(a) (2000).

³⁰ *Id.*; Charles Siebert, *Planet of the Retired Apes*, N.Y. Times Mag. 28, 30 (July 24, 2005) (available at http://www.nytimes.com/2005/07/24/magazine/24CHIMPS.html?_r=1) (last accessed Apr. 12, 2009).

³¹ Siebert, *supra* n. 30, at 31.

develop the effects of the virus.³² They also discovered that maintaining large numbers of chimpanzees was prohibitively expensive.³³ The federal government was spending \$20 to \$30 per day to keep each chimpanzee in a laboratory cage, even though the chimpanzees no longer had any value as research animals.³⁴

While the CHIMP Act was being considered on the Senate floor, Senator Bob Smith (R-NH) rejected euthanasia as an option for reducing the chimpanzee population, citing an extensive report by the National Research Council suggesting that the best scientists would cease doing medical research for both personal and emotional reasons if euthanasia were allowed.³⁵ Instead, the CHIMP Act called for the establishment of a series of permanent, lifetime sanctuaries for those animals no longer deemed useful by research scientists.³⁶ Senator Smith noted that the costs of care for a single chimpanzee in a sanctuary setting would not exceed \$8 to \$15 per day.³⁷ Indeed, the Congressional Budget Office concluded that the sanctuary system would actually save the government money once the sanctuaries were constructed.³⁸

Opponents of the sanctuary system raised some concerns, however. For example, Patrick Hof, a neuroscience professor at Mount Sinai School of Medicine, noted that the aging chimpanzees are valuable subjects for studying arthritis, diabetes, heart disease, and other conditions of the similarly aging human population.³⁹ Also, Stuart Zola, director of the Yerkes National Primate Center, expressed concern that the sanctuary system would remove chimpanzees from the pool of research animals so that when a new epidemic arrives, this “unique animal model” would no longer be available.⁴⁰ An AIDS researcher suggested that the sanctuaries serve as colonies from which researchers could remove a chimpanzee to a medical facility for six months, perhaps to test a new vaccine, and then return the chimpanzee home to the sanctuary when testing was completed.⁴¹ To address these concerns, the House of Representatives added an amendment to the CHIMP Act while it was still under consideration in 2000 in order to allow for the temporary removal of retired chimpanzees for medical research.⁴² For example, the amendment provided that an individual retired chimpanzee might be removed from the sanctuary because of

³² *Id.*

³³ *Id.* (stating that “each chimp costs roughly \$10,000 a year to maintain”).

³⁴ 146 Cong. Rec. S11654 (daily ed. Dec. 6, 2000).

³⁵ *Id.* at S11655.

³⁶ *Id.* at S11654.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Siebert, *supra* n. 30, at 61.

⁴⁰ *Id.*

⁴¹ David Berreby, *Unneeded Lab Chimps Face Hazy Future*, 146 N.Y. Times A1, C8 (Feb. 4, 1997) (available at <http://www.nytimes.com/1997/02/04/science/unneeded-lab-chimps-face-hazy-future.html?sec=alth>) (last accessed Apr. 12, 2009).

⁴² 146 Cong. Rec. at S11654.

that chimpanzee's specific prior medical history if no unretired chimpanzee with a similar history was available in a research facility.⁴³

Chimp Haven, the first facility completed, consists of 200 acres in Louisiana.⁴⁴ In April 2005,⁴⁵ two female chimpanzees that had participated in the NASA space program were the first to arrive at the sanctuary.⁴⁶ Since then, more than 100 retired research chimpanzees have been relocated to Chimp Haven, which has the capacity to house as many as 200 chimpanzees.⁴⁷

Seven years after Congress passed the CHIMP Act, Representative Jim McCrery (R-LA) joined Senator Richard Burr (R-NC) in introducing the "Chimp Haven is Home Act" to eliminate the CHIMP Act's medical research exception.⁴⁸ House Bill 3295, introduced by Representative McCrery, was companion legislation to Senate Bill 1916, which passed both houses and became Public Law 110-170 of the 110th Congress on December 26, 2007.⁴⁹ Representative McCrery noted that because scientists had determined that the chimpanzees were no longer useful as experimental subjects, the legislation would not adversely affect research into human health issues.⁵⁰ Instead, while the chimpanzees would be available for noninvasive behavioral research, such as studies of their natural social interactions, they would remain in the safety of the sanctuary for the rest of their lives.⁵¹

3. *Great Ape Protection Act*

On April 17, 2008, Representative Edolphus Towns (D-NY) joined a bipartisan group of seven co-sponsors to introduce the Great Ape Protection Act, House Bill 5852.⁵² On the same day, the bill was referred to the Committee on Energy and Commerce and then to the Subcommittee on Health, the Committee on Ways and Means, and then to the Subcommittee on Trade, and also to the Committee on Foreign Affairs.⁵³ By the end of the 110th session of Congress, twenty-

⁴³ 42 U.S.C. § 287a-3a(d)(3)(A)(ii)(I) (2000).

⁴⁴ Chimp Haven, *Our History*, <http://www.chimphaven.org/about-history.cfm> (last accessed Apr. 12, 2009).

⁴⁵ *Id.*

⁴⁶ Siebert, *supra* n. 30.

⁴⁷ Chimp Haven, *supra* n. 44.

⁴⁸ 153 Cong. Rec. E2670 (daily ed. Dec. 28, 2007).

⁴⁹ Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>, *select* Bill Number, *search* "hr3295," *select* All Information (last accessed Apr. 12, 2009); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>, *select* Bill Number, *search* "s1916," *select* All Information (last accessed Apr. 12, 2009); Pub. L. No. 110-170, 121 Stat. 2465 (2007).

⁵⁰ 153 Cong. Rec. at E2670.

⁵¹ *Id.*

⁵² Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* "hr5852," *select* All Information (last accessed Apr. 12, 2009).

⁵³ *Id.*

nine sponsors signed onto the bill, but the legislation died in committee.⁵⁴ Because of the strong interest by proponents such as HSUS,⁵⁵ the legislation will likely be reintroduced in the next session.

The purpose of the Great Ape Protection Act is to prohibit invasive research on the great apes,⁵⁶ including chimpanzees, gorillas, bonobos, orangutans, and gibbons.⁵⁷ Most countries already have such a ban in place.⁵⁸ In Great Britain, for example, citing issues of morality and the cognitive capacities of the great apes, the British Home Secretary ceased granting licenses for such research in 1997.⁵⁹ New Zealand amended its Animal Welfare Act in 1999 to prohibit the use of gorillas, chimpanzees, bonobos, and orangutans in research unless it is in the interest of the specific animal.⁶⁰ Austria, Japan, Sweden, Australia, and the Netherlands have similar limitations.⁶¹

Opponents of the legislation argue that medical research on the great apes is necessary because it reduces future danger to humans.⁶² For example, arguably the drug reaction in chimpanzees, in terms of absorption, distribution, and excretion, is more closely predictive of human drug reaction than the reaction in nonprimates.⁶³ In addition, the chimpanzee is the only nonhuman animal that provides for effective testing of hepatitis B and C viruses.⁶⁴ Thus, some researchers are concerned by the rapid decline in the number of chimpanzees available for breeding or medical research caused by a federal moratorium on breeding and the international bans on invasive research.⁶⁵ They worry that future epidemics will occur, making the chimpanzee even more valuable as a research subject while largely unavailable for that research.⁶⁶

Proponents of the legislation counter that the ethical concerns associated with testing on the great apes override the other issues. "The

⁵⁴ *Id.*

⁵⁵ Humane Socy. U.S., *Legislation and Laws*, http://www.hsus.org/legislation_laws/ (last accessed Apr. 12, 2009).

⁵⁶ H.R. 5852, 110th Cong. § 3 (Apr. 17, 2008) (available at <http://thomas.gov/bss/110search.html>; *select* Bill Number, *search* "hr5852," *select* Text of Legislation) (last accessed Apr. 12, 2009).

⁵⁷ *Id.* at § 5.

⁵⁸ Press Release, Humane Socy. U.S., *Federal Bill Introduced to End Invasive Research on Chimpanzees* (Apr. 17, 2008) (available at http://www.hsus.org/press_and_publications/press_releases/federal_bill_introduced_to_end_chimp_research_041708.html) (last accessed Apr. 12, 2009).

⁵⁹ New England Anti-Vivisection Society, *Release and Restitution for Chimpanzees in U.S. Laboratories, International Bans*, <http://www.releasechimps.org/mission/end-chimpanzee-research/country-bans/> (Dec. 18, 2008) (last accessed Apr. 12, 2009).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² John L. VandeBerg & Stuart M. Zola, *A Unique Biomedical Resource at Risk*, 437 *Nature* 30, 30 (Sept. 2005).

⁶³ *Id.*

⁶⁴ *Id.* at 31.

⁶⁵ *Id.* at 32.

⁶⁶ *Id.*

remarkable cognitive ability of chimpanzees makes this an urgent moral issue,” stated Wayne Pacelle, HSUS president and CEO.⁶⁷ Representative Roscoe Bartlett (R-MD), one of the co-sponsors, added, “[as] a scientist who worked with chimpanzees on research projects, I believe the time has come to . . . rigorously apply existing alternatives.”⁶⁸

The cost of maintaining the great apes is another important factor driving this legislation. The National Center for Research Resources, a department of the National Institute of Health, estimates that it will cost \$325 million to care for an estimated 650 chimpanzees during their lifetimes.⁶⁹ Great apes survive in captivity much longer than they do in the wild, generating lifetime costs for a single primate of between \$300,000 and \$500,000.⁷⁰ The federal government can guarantee the care and protection of the same animal in a sanctuary rather than in a research lab for approximately \$275,000, saving money for other research.⁷¹

In a statement of findings and purpose, the text of the legislation notes that the great apes are intelligent and sentient animals that suffer greatly from being in laboratory environments, often experiencing profound depression and distress.⁷² Therefore, the law would not only phase out and ban federal funding for invasive biomedical research but also permanently retire all of the federally owned great apes that have been used in such research.⁷³ As of this writing, HSUS promises to make great ape protection a priority in its upcoming legislative activities.⁷⁴

B. Farm Animals

1. Agricultural Protection and Prosperity Act of 2007

On March 8, 2007, House Bill 1398 and Senate Bill 807 were introduced.⁷⁵ These bills exempt manure from consideration as a hazardous substance, pollutant, or contaminant requiring notification to the Environmental Protection Agency (EPA) and local emergency responders under the Comprehensive Environmental Response Compen-

⁶⁷ Press Release, Humane Socy. U.S., *supra* n. 58.

⁶⁸ *Id.*

⁶⁹ Andrew Knight, *The Beginning of the End for Chimpanzee Experiments?*, 3:16 *Phil., Ethics & Humanities in Med.*, ¶ 4 (June 2, 2008) (available at <http://www.peh-med.com/content/3/1/160> (last accessed Apr. 12, 2009)).

⁷⁰ *Id.*

⁷¹ H.R. 5852, 110th Cong. at § 2(a)(7).

⁷² *Id.* at § 2.

⁷³ *Id.* at §§ 3–4.

⁷⁴ Humane Socy. U.S., *supra* n. 55.

⁷⁵ Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>; select Bill Number, search “hb1398” (last accessed Apr. 12, 2009); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>; select Bill Number, search “sb807” (last accessed Apr. 12, 2009).

sation and Liability Act of 1980 (CERCLA).⁷⁶ Proponents contend that the legislation is necessary to protect farmers from unnecessary lawsuits because CERCLA was never intended to apply to agriculture.⁷⁷ Instead, CERCLA was intended to address the “cleanup of dangerous abandoned industrial sites and chemical landfills.”⁷⁸ They argue that farmers are not polluters and that manure is a healthy and organic fertilizer.⁷⁹

Opponents, such as the Sierra Club and HSUS, distinguish between small farms and factory farms, noting that large industrial farms produce as much as 500 million tons of manure every year.⁸⁰ According to the Sierra Club, “[spills] and runoff of manure from factory farms can destroy rivers and contaminate downstream communities’ drinking water supplies.”⁸¹ One study suggests that the manure from large dairies, feedlots, and other factory farm operations threatens the water quality in thirty states.⁸² Therefore, opponents of the legislation argue that factory farms should be treated like “all other major polluting industries.”⁸³

Although this legislation died in committee during the 110th Congress, the EPA issued a final rule exempting farm animal wastes from CERCLA reporting requirements on December 18, 2008.⁸⁴ Thus, until a successful judicial challenge to the final rule, a rule change, or the introduction of alternative legislation, farm animal wastes will remain exempt from CERCLA requirements.

2. *The Preservation of Antibiotics for Medical Treatment Act*

In February 2007, Representative Louise Slaughter (D-NY) introduced House Bill 962, and Senators Edward Kennedy (D-MA), Olympia Snowe (R-ME), Harry Reid (D-NV), and Sherrod Brown (D-OH) introduced matching legislation, Senate Bill 549.⁸⁵ The legislation

⁷⁶ Sen. 807, 110th Cong. (Mar. 8, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “s807,” *select* Text of Legislation) (last accessed Apr. 12, 2009); H.R. 1398, 110th Cong. (Mar. 8, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “hr1398,” *select* Text of Legislation) (last accessed Apr. 12, 2009).

⁷⁷ 152 Cong. Rec. E2211 (daily ed. Dec. 8, 2006).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Sierra Club, *Protect Communities’ Air and Water From Factory Farm Pollution: Stop the Tyson Dirty Water Bailout Bill*, http://www.sierraclub.org/factoryfarms/factsheets/protect_communities.asp (last accessed Apr. 12, 2009).

⁸¹ *Id.*

⁸² Humane Farming Assn., *Factory Farming*, <http://www.hfa.org/factory/index.html> (last accessed Apr. 12, 2009).

⁸³ Humane Socy. U.S., *Factory Farms: Polluting the Environment and Getting Away with It*, http://www.hsus.org/farm/news/ournews/factory_farms_polluting.html (May 25, 2006) (last accessed Apr. 12, 2009).

⁸⁴ 73 Fed. Reg. 76948, 76951 (Dec. 18, 2008).

⁸⁵ H.R. 962, 110th Cong. (Feb. 8, 2007) (available at <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “hr962,” *select* Text of Legislation) (last accessed Feb. 24, 2009); Sen. 549, 110th Cong. (Feb. 12, 2007) (available at <http://>

aims to eliminate the nontherapeutic use of important antibiotics,⁸⁶ including penicillin and tetracycline, in farm animals used for human consumption.⁸⁷ These antibiotics are used on healthy animals to promote growth and ward off infections.⁸⁸ Representative Slaughter pointed out, however, that this “habitual” use of antibiotics contributes to the growing development of antimicrobial resistant infections in people.⁸⁹ Therefore, people are becoming potentially less capable of fighting life threatening diseases.⁹⁰ While conceding that the legislation will not prevent the use of antibiotics on sick animals or family pets, Senator Kennedy also noted that the United States and Canada are two of the last developed countries in the world that have not banned the nontherapeutic use of antibiotics on healthy animals.⁹¹

Similar legislation has been introduced in prior sessions of Congress, and HSUS has urged citizens to support it.⁹² In fact, early efforts resulted in the restaurant chain McDonald’s convincing its meat suppliers to cut back on the unnecessary use of antibiotics.⁹³ As with the earlier versions, however, this legislation never left committee and will need to be reintroduced to the 111th Congress if it is to become law.⁹⁴

II. STATE LEGISLATION

The legislative processes of the states are generally the same as the federal legislative process.⁹⁵ Any bills that do not become law dur-

thomas.loc.gov/bss/110search.html; *select* Bill Number, *search* “s549,” *select* Text of Legislation) (last accessed Feb. 24, 2009).

⁸⁶ 153 Cong. Rec. E309 (daily ed. Feb. 9, 2007).

⁸⁷ *Id.*

⁸⁸ Suzanne Millman, Humane Socy. U.S., *The Emerging Threat of Antibiotic Resistance: A Hidden Cost of Factory Farming*, http://www.hsus.org/archive/about_us/about_hsus/publications/magazines_newsletters/all_animals/volume_4_issue_1_spring_2002/the_emerging_threat_of_antibiotic_resistance_a_hidden_cost_of_factory_farming.html (last accessed Apr. 12, 2009); Humane Socy. U.S., *Factories and Farmers’ Markets*, http://www.hsus.org/archive/about_us/about_hsus/publications/magazines_newsletters/all_animals/volume_5_issue_1_spring_2003/factories_and_farmers_markets.html (last accessed Apr. 12, 2009).

⁸⁹ 153 Cong. Rec. at E309.

⁹⁰ *Id.*

⁹¹ 153 Cong. Rec. S1853 (daily ed. Feb. 12, 2007).

⁹² Humane Socy. U.S., *Urge Congress to Just Say No to Nontherapeutic Antibiotic Drugs*, http://www.hsus.org/farm/news/ournews/archive/urge_congress_to_just_say_no_to_nontherapeutic_antibiotic_drugs.html (Oct. 22, 2003) (last accessed Apr. 12, 2009).

⁹³ *Id.*

⁹⁴ Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “hb962,” *select* All Information (last accessed Apr. 12, 2009); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 110th Congress*, <http://thomas.loc.gov/bss/110search.html>; *select* Bill Number, *search* “sb549,” *select* All Information (last accessed Apr. 12, 2009).

⁹⁵ See e.g. Charles W. Johnson, *How Our Laws Are Made* (U.S. Govt. Printing Office 2003) (available at <http://www.senate.gov/reference/resources/pdf/howourlawsaremade.pdf>) (last accessed Apr. 12, 2009) (providing an updated overview of the federal legislative process); N.J. Legis., *Our Legislature*, <http://www.njleg.state.nj.us/legislativepub/>

ing the current session expire and cannot be reconsidered by the subsequent legislature unless they are reintroduced.⁹⁶

A. *Animal Fighting*

1. *Dogfighting*

Humans have forced dogs to fight for entertainment since Roman times.⁹⁷ Dogfighting was first outlawed in England in 1835, and although it became a part of American culture, most states outlawed it by the 1860s, and all states eventually outlawed the practice by 1976.⁹⁸ Despite its illegality, dogfighting has remained a part of American culture because law enforcement officials did not aggressively enforce the laws against dogfighting until recently.⁹⁹ Dogfighting was once confined to rural areas of the South, but it has now become widespread with an estimated 40,000 people participating in organized dogfighting rings and another 100,000 participating in informal dogfighting.¹⁰⁰ One survey found that one in five children in Chicago has seen a dogfight, while other estimates are as high as four out of five.¹⁰¹ Dogfighting is associated with other crimes and gang activities including drug dealing, drug use, gambling, theft, and violence.¹⁰²

Law enforcement agencies began enforcing dogfighting laws more aggressively after a grand jury indicted former Atlanta Falcons quarterback Michael Vick on federal dogfighting charges.¹⁰³ However, at the same time, the Vick case generated more interest in dogfighting among urban youth because they saw an affluent role model involved in an activity that “[shows] . . . toughness.”¹⁰⁴

our.asp (last accessed Apr. 12, 2009) (providing general information on New Jersey's legislative process); Ohio Legis., *The Legislative Process*, <http://www.legislature.state.oh.us/process.cfm> (last accessed Apr. 12, 2009) (explaining how a bill becomes a law in Ohio).

⁹⁶ See generally N.J. Legis., *supra* n. 95; Ohio Legis., *supra* n. 95 (explaining how a bill becomes a law in these states).

⁹⁷ Animal Leg. & Historical Ctr., *Dog Fighting Detailed Discussion*, <http://www.animallaw.info/articles/ddusdogfighting.htm> (last accessed Apr. 12, 2009).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Humane Socy. U.S., *A Nation in the Ring (Part 1: The Dogs and the Territory)*, http://www.hsus.org/acf/news/dogfighting_national_epidemic_1.html (Sept. 7, 2007) (last accessed Apr. 12, 2009).

¹⁰¹ Humane Socy. U.S., *A Nation in the Ring (Part 3: Pit Bulls as Currency)*, http://www.hsus.org/acf/news/dogfighting_national_epidemic_3.html (Sept. 7, 2007) (last accessed Apr. 12, 2009).

¹⁰² Animal Leg. & Historical Ctr., *supra* n. 97.

¹⁰³ Humane Socy. U.S., *Dogfighting Raids Increase After Vick Indictment*, http://www.hsus.org/acf/news/dogfighting_raids_increase.html (Aug. 21, 2007) (last accessed Apr. 12, 2009); see Rebecca J. Huss, *Lessons Learned: Acting As Guardian / Special Master in the Bad Newz Kennels Case*, 15 *Animal L.* 69 (2008) (providing an in depth discussion of the role of the special master in the Michael Vick dogfighting case).

¹⁰⁴ Sharon L. Peters, *A Fight to Save Urban Youth from Dogfighting*, http://www.usatoday.com/news/nation/2008-09-29-dogfighting_N.htm (Sept. 29, 2008) (last accessed Apr. 12, 2009).

Although dogfighting is a crime in every state, the states vary in how severely they treat the crime and whether they criminalize different aspects of the activity.¹⁰⁵ HSUS ranks the states in tiers based on the individual state's legal response to dogfighting.¹⁰⁶ In first-tier states, participating in dogfighting, being a spectator at a dogfight, and possessing dogs for fighting are all felonies.¹⁰⁷ In second-tier states, participating in dogfighting and possessing dogs for fighting are felonies, but being a spectator at a dogfight is a misdemeanor.¹⁰⁸ In third-tier states, participating in dogfighting is a felony, but possessing dogs for fighting and being a spectator at a dogfight is a misdemeanor.¹⁰⁹ There are three states in the fourth and lowest tier.¹¹⁰ In Montana and Hawaii, participating in dogfighting and possessing dogs for fighting are felonies, but being a spectator at a dogfight is legal.¹¹¹ In Nevada, participating in dogfighting is a felony, being a spectator at a dogfight is a misdemeanor, and possessing dogs for fighting is legal.¹¹²

The more stringent the laws are, the easier it is for law enforcement officers to arrest individuals engaged in dogfighting.¹¹³ For example, when possession of fighting dogs is legal, police have to catch dogfighters in the act of dogfighting to make an arrest.¹¹⁴ Thus, even if it were clear that a person is a dogfighter and that a prosecutor would be able to prove as much in court, police could not arrest that person simply because he owned fighting dogs. In addition, when the law does not criminalize the act of observing a dogfight, police have to differentiate between dogfighters and spectators at dogfighting events to make arrests.¹¹⁵ Thus, it may be easy for dogfighters to avoid arrest at a dogfighting raid by claiming they are only spectators.

In 2008, many states considered legislative changes to strengthen their dogfighting laws. Delaware and Iowa each moved up a tier in the HSUS ranking. Delaware made it a felony to be a spectator at a dogfighting event.¹¹⁶ In Iowa, the first offense for a spectator is still a misdemeanor, but a subsequent offense is now a felony.¹¹⁷ In the be-

¹⁰⁵ Humane Socy. U.S., *Ranking of State Dogfighting Laws*, http://www.hsus.org/acf/fighting/dogfight/ranking_state_dogfighting_laws.html (last updated Feb. 1, 2009) (last accessed Apr. 12, 2009).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Humane Socy. U.S., *Ranking of State Dogfighting Laws*, *supra* n. 105.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Humane Socy. U.S., *Animal Fighting Laws: Where Does Your State Stand?*, http://www.hsus.org/legislation_laws/state_legislation/animal_fighting_laws_where_does_your_state_stand.html (last accessed Apr. 12, 2009).

¹¹⁵ *Id.*

¹¹⁶ Del. Code Ann. tit. 11, § 1326(b) (Lexis 2008).

¹¹⁷ Iowa Code §§ 717D.1(8), 717D.2, 717.D4 (2008).

gining of 2008, Idaho and Wyoming were the only states that still considered dogfighting a misdemeanor.¹¹⁸ Both states passed laws that moved them up to the second tier of the HSUS ranking by passing laws that make participating in dogfighting and possessing dogs for fighting felonies.¹¹⁹

Other states considered different types of penalties to deter dogfighting and other tools to streamline the prosecution of animal fighting cases.¹²⁰ Oregon added advertising dogfighting equipment and possession of dogfighting paraphernalia to its list of felonies associated with dogfighting.¹²¹ Michigan considered making it a felony to engage, solicit, or possess images of animals fighting, although this bill did not become law.¹²² New Hampshire and Ohio enacted laws allowing police to confiscate animals used in illegal fights.¹²³ The New Hampshire law also prohibits a person convicted of animal fighting from having custody or control over certain animals.¹²⁴ Virginia enacted a law streamlining the process of forfeiture and bonding, requiring the alleged animal fighter to provide financially for the care of the animals or lose his right to own the animals.¹²⁵ Virginia also added dogfighting as a qualifying predicate offense under the Virginia Racketeer Influenced and Corrupt Organization Act.¹²⁶ In 2008, a number of states strengthened their animal fighting statutes and momentum in this direction seems to be increasing.

2. Cockfighting

Cockfighting is a centuries old sport where two specially bred birds fight for the gambling and entertainment purposes of their owners and spectators.¹²⁷ Cockfighting often involves “breeding birds for viciousness, drugging them to heighten aggression, and fitting their legs with razor-sharp knives or gaffs, which resemble curved ice

¹¹⁸ Jared Miller, Casper Star-Tribune Online, *Poll: Make Dogfighting Felony*, <http://www.trib.com/articles/2008/01/30/news/wyoming/9f43e36ee3ab7c38872573e0000989a6.txt> (Jan. 30, 2008) (last accessed Apr. 12 2009).

¹¹⁹ Idaho Code Ann. § 25-3507 (Lexis Supp. 2008); Wyo. Stat. Ann. §§ 6-3-203(c)(ii)(n) (Supp. 2008).

¹²⁰ Or. Rev. Stat. §§ 167.360, 167.370, 167.372 (2007); Mich. Sen. 1405, 94th Leg., Reg. Sess. (June 24, 2008) (available at <http://www.legislature.mi.gov/documents/2007-2008/billintroduced/Senate/pdf/2008-SIB-1405.pdf>) (last accessed Apr. 12, 2009); Mich. Sen. 1406, 94th Leg., Reg. Sess. (June 24, 2008) (available at <http://www.legislature.mi.gov/documents/2007-2008/billintroduced/Senate/pdf/2008-SIB-1406.pdf>) (last accessed Apr. 12, 2009); N.H. Rev. Stat. Ann. § 644:8-a(IV-V) (West Supp. 2008); 2008 Ohio Legis. Serv. L-1882-1885 (West); Va. Code Ann. § 3.2-6571 (West 2008).

¹²¹ Or. Rev. Stat. §§ 167.360, 167.370, 167.372.

¹²² Mich. Sen. 1406, 94th Leg., Reg. Sess. at § 2; Mich. Sen. 1405, 94th Leg., Reg. Sess. at § 49A.

¹²³ N.H. Rev. Stat. Ann. § 644:8-a(IV); 2008 Ohio Legis. Serv. L-1883.

¹²⁴ N.H. Rev. Stat. Ann. § 644:8-a(V).

¹²⁵ Va. Code Ann. § 3.1-796.124.

¹²⁶ *Id.* at § 18.2-513.

¹²⁷ Humane Socy. U.S., *Cockfighting Fact Sheet*, http://www.hsus.org/hsus_field/animal_fighting_the_final_round/cockfighting_fact_sheet/ (last accessed Apr. 12, 2009).

picks.”¹²⁸ An estimated 20,000 to 30,000 people in the United States participate in cockfighting.¹²⁹ Cockfighting is sometimes associated with other criminal activity.¹³⁰ In 2003, fighting roosters were responsible for spreading Newcastle disease in the Southwestern United States.¹³¹ Newcastle disease “is a contagious and fatal viral disease affecting most species of birds.”¹³² It is spread through direct contact between uninfected birds and infected birds as there are high concentrations of the virus in infected birds’ bodily discharges.¹³³

Although cockfighting is illegal in every state, as with dogfighting, the states vary with regard to the penalties they impose and their criminalization of different aspects of the activity. The penalties for cockfighting itself, possessing birds for cockfighting, being a spectator at a cockfight, and possession of cockfighting implements vary widely.¹³⁴ Participating in cockfights is still common, mostly in the southern states that punish the crime as a misdemeanor.¹³⁵ Louisiana became the last state to outlaw cockfighting when its 2007 legislation banning the practice took effect on August 15, 2008.¹³⁶ Also in 2008, some states considered changes to their cockfighting laws. Hawaii, Ohio, and South Carolina all considered changing cockfighting from a misdemeanor to a felony, although none of them ended up making the change.¹³⁷

¹²⁸ Press Release, Humane Socy. U.S., *The HSUS Praises Hilo Police Department for Cockfighting Bust* (Mar. 7, 2008) (available at http://www.hsus.org/press_and_publications/press_releases/hsus_praises_hawaii_cockfighting_bust_030708.html) (last accessed Apr. 12, 2009).

¹²⁹ Winston Ross, *Cracking Down on Cockfighting*, <http://www.newsweek.com/id/128842> (Mar. 24, 2008) (last accessed Apr. 12, 2009).

¹³⁰ *See id.* (During a series of raids of cockfighting operations in Oregon and southwest Washington, federal agents found \$100,000 in cash, fifty guns, 2.5 pounds of methamphetamine, 1.5 pounds of cocaine, 6 pounds of marijuana, forty-eight marijuana plants, and arrested fifty-one people.)

¹³¹ *Id.*

¹³² Avian Biotech International, *Newcastle Disease Virus*, <http://www.avianbiotech.com/diseases/newcastle.htm> (last accessed Apr. 12, 2009).

¹³³ *Id.*

¹³⁴ Humane Socy. U.S., *Ranking of State Cockfighting Laws*, http://www.hsus.org/acf/fighting/cockfight/state_cockfighting_laws_ranked.html (last accessed Apr. 12, 2009); Humane Socy. U.S., *Cockfighting*, <http://www.hsus.org/acf/fighting/cockfight/> (last accessed Jan. 5, 2009).

¹³⁵ Humane Socy. U.S., *Ranking of State Cockfighting Laws*, *supra* n. 134.

¹³⁶ Ed Anderson, *Louisiana’s Ban on Cockfighting Takes Effect Friday*, http://www.nola.com/news/index.ssf/2008/08/louisianas_ban_on_cockfighting.html (Aug. 12, 2008) (last accessed Apr. 12, 2009); La. Stat. Ann. § 102.23 (2008).

¹³⁷ Haw. Sen. 2552, 24th Leg. (Jan. 18, 2008) (available at http://www.capitol.hawaii.gov/session2008/bills/SB2552_.htm) (last accessed Apr. 12, 2009); Ohio H. 415, 127th Gen. Assembly (Dec. 18, 2007) (available at http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_415) (last accessed Apr. 12, 2009); S.C. H. 4021, 117th Gen. Assembly (May 2, 2007) (available at http://www.scstatehouse.gov/sess117_2007-2008/bills/4021.htm) (last accessed Apr. 12, 2009); S.C. Sen. 1041, 117th Gen. Assembly (Jan. 30, 2008) (available at http://www.scstatehouse.gov/sess117_2007-2008/bills/1041.htm) (last accessed Apr. 12, 2009).

Hawaii has conflicting cultural attitudes toward cockfighting. Some Hawaiians view cockfighting as a cultural tradition.¹³⁸ Its practice dates back to plantation days.¹³⁹ One cockfighting enthusiast, who served five days in jail in 1989 after he was arrested at a cockfight, continued to write letters to lawmakers urging them to legalize the practice, comparing it to sportfishing and golf.¹⁴⁰ In 2008, while some state senators considered changing cockfighting from a misdemeanor to a felony, other state representatives submitted resolutions requesting that the General Assembly of the United Nations commemorate cockfighting as a global sport.¹⁴¹ Resolutions express the position of the state's legislature or a single house of the legislature and do not have the force of law.¹⁴² The resolutions were referred to committees and did not pass.¹⁴³

B. Animal Hoarding

HSUS defines an animal hoarder as a person who has a quantity of animals for which he cannot provide adequate care.¹⁴⁴ Animal hoarding causes the suffering of animals and humans alike.¹⁴⁵ There are approximately 1,500 new cases of animal hoarding in the United States each year, and each case involves substantial costs to society for care of the animals, prosecution of the animal hoarder, and cleanup of the property.¹⁴⁶ Animal hoarding is often associated with psychologi-

¹³⁸ Jean Christensen, *Isle Cockfighting Persists Despite Laws Against It*, <http://archives.starbulletin.com/97/03/04/news/story1.html> (Mar. 4, 1997) (last accessed Feb. 21, 2009).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Haw. Sen. 2552, 24th Leg.; Haw. H. Con. Res. 180, 24th Leg. (Mar. 10, 2008) (available at http://www.capitol.hawaii.gov/session2008/bills/HCR180_.htm) (last accessed Apr. 12, 2009); Haw. H. Res 153, 24th Leg. (Mar. 10, 2008) (available at http://www.capitol.hawaii.gov/session2008/bills/HR153_.htm) (last accessed Apr. 12, 2009); see Christensen, *supra* n. 138 (Although the practice is illegal in Hawaii, some citizens would like it to be legalized).

¹⁴² Haw. St. Legis., *Types of Bills and Resolutions*, <http://www.capitol.hawaii.gov/site1/info/guide/process02.asp> (last accessed Apr. 12, 2009).

¹⁴³ Haw. St. Legis., *Bill Status HR. 153*, <http://www.capitol.hawaii.gov/session2008/lists/getstatus2.asp?billno=HR153> (last accessed Apr. 12, 2009); Haw. State. Legis., *Bill Status HCR 180*, <http://www.capitol.hawaii.gov/session2008/lists/getstatus2.asp?billno=HCR180> (last accessed Apr. 12, 2009).

¹⁴⁴ Humane Socy. U.S., *Behind Closed Doors: The Horrors of Animal Hoarding*, http://www.hsus.org/pets/issues_affecting_our_pets/behind_closed_doors_the_horrors_of_animal_hoarding.html (last accessed Apr. 12, 2009).

¹⁴⁵ *Id.*

¹⁴⁶ Animal Hoarding.com: An In-Depth Look at the Phenomenon, *Inside Animal Hoarding*, <http://animalhoarding.com> (last accessed Apr. 12, 2009); see Pet-Abuse.com, *Animal Hoarding AKA Collecting*, http://www.pet-abuse.com/pages/animal_cruelty/hoarding.php (last accessed Apr. 12, 2009) (The community may have to cover the costs of veterinary care and housing resulting from the inability of the hoarders to afford to pay for the spaying and neutering and the order of the local Department of Health to raze the hoarders' homes to the ground.).

cal disorders, particularly the more severe disorders.¹⁴⁷ Early research suggested that animal hoarding was most likely associated with obsessive-compulsive disorder.¹⁴⁸ However, more recent research suggests that the psychological disorders behind animal hoarding are more complex, sometimes including a history of childhood abuse, trauma, or dysfunction that leads to compulsive caregiving.¹⁴⁹

Some argue that the criminal justice system is ill equipped to handle animal hoarding cases.¹⁵⁰ Prosecutors usually charge animal hoarders under animal cruelty laws, an approach that some say is too simple for animal hoarding cases because it does not address the underlying mental health issues or recognize different types of animal hoarders.¹⁵¹ Critics of this approach point out that it leads to almost complete recidivism.¹⁵²

Furthermore, animal hoarders usually act without intent to harm the animals.¹⁵³ Because the cases involve neglect instead of deliberate abuse, the acts of hoarders are not generally crimes under animal cruelty statutes.¹⁵⁴ To address this issue, legislators in Michigan's House of Representatives introduced a bill to amend its animal cruelty statutes to provide that a person's affection for animals or humanitarian purpose in acquiring them is not a defense to animal cruelty.¹⁵⁵ This bill died in committee.¹⁵⁶ Two other states considered changes to their animal cruelty statutes in 2008 to more effectively deal with the underlying causes of animal hoarding.¹⁵⁷

1. *Hawaii*

Hawaii amended its animal cruelty statute to include animal hoarding and provide enforcement mechanisms to deal with animal

¹⁴⁷ Gary J. Patronek, *Animal Hoarding: What Caseworkers Need to Know* 1, <http://www.tufts.edu/vet/cfa/hoarding/pubs/masshousing.pdf> (2007) (last accessed Apr. 12, 2009).

¹⁴⁸ *Id.* at 3.

¹⁴⁹ *Id.* at 23.

¹⁵⁰ Gary J. Patronek, Lynn Loar & Jane N. Nathanson, Eds., *Animal Hoarding: Structuring Interdisciplinary Responses to Help People, Animals and Communities at Risk* 21–22, <http://www.tufts.edu/vet/cfa/hoarding/pubs/AngellReport.pdf> (2006) (last accessed Apr. 12, 2009).

¹⁵¹ *Id.* at 12.

¹⁵² *Id.* at 1.

¹⁵³ *Id.* at 21.

¹⁵⁴ *Id.*

¹⁵⁵ Mich. H. 5946, 94th Leg., Reg. Sess. § 3(E) (Apr. 8, 2008) (available at <http://www.legislature.mi.gov/documents/2007-2008/billintroduced/House/pdf/2008-HIB-5946.pdf>) (last accessed Apr. 12, 2009).

¹⁵⁶ Mich. Legis., *House Bill 5946*, [http://www.legislature.mi.gov/\(S\(nityf1u4wl2nffm cq5q0h45\)\)/mileg.aspx?page=getObject&objectName=2008-HB-5946](http://www.legislature.mi.gov/(S(nityf1u4wl2nffm cq5q0h45))/mileg.aspx?page=getObject&objectName=2008-HB-5946) (last accessed Apr. 12, 2009).

¹⁵⁷ Haw. Rev. Stat. § 711-1109.6 (2008); N.J. Sen. 1989, 213th Leg. § 2 (June 16, 2008) (available at http://www.njleg.state.nj.us/2008/Bills/S2000/1989_I1.pdf) (last accessed Apr. 12, 2009); N.J. Assembly 2981, 213th Leg. § 2 (June 16, 2008) (available at http://www.njleg.state.nj.us/2008/Bills/A3000/2981_I1.pdf) (last accessed Apr. 12, 2009).

hoarding offenses.¹⁵⁸ The amendments make animal hoarding a misdemeanor and allow law enforcement officials to impound animals pending forfeiture unless the alleged animal hoarder posts a bond within seventy-two hours to reimburse the facility caring for the animals for the animals' care.¹⁵⁹ The bond and forfeiture process allows facilities to avoid incurring costs for the care of the animals pending the prosecution of the alleged animal hoarder.¹⁶⁰ If the alleged animal hoarder does not post a bond within the specified period, he forfeits his rights to the animals, allowing the facility to take ownership of them.¹⁶¹

2. *New Jersey*

During the 2008–2009 session, legislators introduced companion bills in New Jersey's Assembly and Senate to add animal hoarding to the state's animal cruelty statutes as a criminal and civil offense.¹⁶² The bills prohibit possession of animals in such quantities that the person cannot provide minimum care for them and "at least some of the animals experience death, bodily injury[,] or other serious adverse health consequences."¹⁶³ The crime of animal hoarding would be punishable by a fine up to \$10,000 and imprisonment for up to eighteen months.¹⁶⁴ The proposed law imposes a civil penalty between \$1,000 and \$3,000.¹⁶⁵

Legislators introduced the bill in both houses of the legislature on June 16, 2008, and the bills were referred to committees.¹⁶⁶ New Jersey is currently in its two-year legislative term for 2008–2009, which is split into two annual sessions.¹⁶⁷ Unfinished business from the first year is continued in the second year.¹⁶⁸ Unless these bills pass by the end of the 2009 annual session, they will expire.¹⁶⁹

C. *Antifreeze Safety*

Ethylene glycol, the main ingredient in most antifreeze formulations, not only smells and tastes sweet, but it is also poisonous to pets

¹⁵⁸ Haw. Rev. Stat. §§ 711-1109.6, 711-1110.5.

¹⁵⁹ *Id.*

¹⁶⁰ Patronek, *supra* n. 150, at 22.

¹⁶¹ *Id.*

¹⁶² N.J. Sen. 1989, 213th Leg. at §§ 2(a), 3(dd); N.J. Assembly 2981, 213th Leg. at §§ 2(a), 3(dd).

¹⁶³ N.J. Sen. 1989, 213th Leg. at §§ 2(a), 3(dd); N.J. Assembly 2981, 213th Leg. at §§ 2(a), 3(dd).

¹⁶⁴ N.J. Sen. 1989, 213th Leg. at § 2(a); N.J. Assembly 2981, 213th Leg. at § 2(a); N.J. Stat. Ann. §§ 2C:43-3(2), 2C:43-6(4) (West 2005).

¹⁶⁵ N.J. Sen. 1989, 213th Leg. at § 3(dd); N.J. Assembly 2981, 213th Leg. at § 3(dd).

¹⁶⁶ N.J. Legis., *Bills 2008-2009 S1989*, [http://www.njleg.state.nj.us; search "s1989", select S1989](http://www.njleg.state.nj.us; search) (last accessed Apr. 12, 2009); N.J. Legis., *Bills 2008-2009 A2981*, [http://www.njleg.state.nj.us; search "a2981", select A2981](http://www.njleg.state.nj.us; search) (last accessed Apr. 12, 2009).

¹⁶⁷ N.J. Legis., *supra* n. 95.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

and wildlife, even in small quantities.¹⁷⁰ Thus, spilled antifreeze poses a serious risk of death to animals.¹⁷¹ In an effort to reduce instances of ethylene glycol poisoning, as of early 2008, five states¹⁷² had already passed legislation requiring antifreeze manufacturers to add a bittering agent to ethylene glycol antifreeze to make it less palatable to animals and children.¹⁷³

During 2008, Washington and Tennessee passed antifreeze safety laws, and New Jersey is still considering making the change.¹⁷⁴ Tennessee's legislature passed the Haley Ham Law due to the diligent efforts of an 11-year-old girl.¹⁷⁵ Ms. Ham began her campaign to get an antifreeze safety law passed in 2007 after someone poisoned her dog Sam and another neighborhood dog with antifreeze.¹⁷⁶

The antifreeze safety laws considered and passed during 2008 are similar to antifreeze safety laws in other states.¹⁷⁷ They require manufacturers to add a bittering agent to antifreeze containing 10% or more ethylene glycol.¹⁷⁸ The penalty for violating Tennessee's law is a \$50 fine.¹⁷⁹ Washington's law and New Jersey's proposed law do not provide for penalties.¹⁸⁰

D. Greyhound Racing

Greyhound racing has its origins in the ancient sport of coursing, where two or more dogs raced each other on a straight track in pursuit of a game animal.¹⁸¹ The first circular track was built in Salt Lake City, Utah, in 1907.¹⁸² Attendance at greyhound races in the United States reached an all time high of 3.5 million in 1992.¹⁸³

¹⁷⁰ Humane Socy. U.S., *Fatal Attraction: Antifreeze Is a Sweet but Deadly Poison for Pets*, http://www.hsus.org/pets/pet_care/antifreeze.html (last updated Feb. 5, 2009) (last accessed Apr. 12, 2009).

¹⁷¹ *Id.*

¹⁷² *Id.* (Arizona, California, Maine, New Mexico, and Oregon).

¹⁷³ *Id.*

¹⁷⁴ Tenn. Code Ann. § 68-131-113 (Lexis 2008); Wash. Rev. Code §§ 19.94.540, 19.94.542, 19.94.544 (2008); N.J. Assembly 1577, 213th Leg. (Jan. 8, 2008) (available at <http://www.njleg.state.nj.us>; search "a1577," select A1577) (last accessed Apr. 12, 2009); N.J. Sen. 979, 213th Leg. (Jan. 28, 2008) (available at <http://www.njleg.state.nj.us>; search "s979," select S979) (last accessed Apr. 12, 2009).

¹⁷⁵ Haley Ham, <http://www.haleyham.com> (last accessed Apr. 12, 2009).

¹⁷⁶ *Id.*

¹⁷⁷ See generally Cal. Bus. & Prof. Code Ann. § 17582(a) (West 2008) ("Any engine coolant or antifreeze . . . that contains more than [10%] ethylene glycol, shall include denatonium benzoate . . . as a bittering agent within the product so as to render it unpalatable.").

¹⁷⁸ Tenn. Code Ann. § 68-131-113(a); Wash. Rev. Code §§ 19.94.540(1); N.J. Assembly 1577, 213th Leg. at § 2(a); N.J. Sen. 979, 213th Leg. at § 2(a).

¹⁷⁹ Tenn. Code Ann. § 68-131-113(d).

¹⁸⁰ Wash. Rev. Code Ann. §§ 19.94.540, 19.94.542, 19.94.544; N.J. Assembly 1577, 213th Leg.; N.J. Sen. 979, 213th Leg.

¹⁸¹ The Greyhound Racing Assn. Am., Inc., *The Most Exciting Dogs in the World*, http://www.gra-america.org/the_sport/history.html (last accessed Apr. 12, 2009).

¹⁸² *Id.*

¹⁸³ *Id.*

States perceive greyhound racing as a way to raise revenue.¹⁸⁴ Animal advocacy groups argue that “greyhound racing constitutes animal abuse because of the industry’s excessive surplus breeding practices, the often cruel methods by which unwanted dogs are destroyed, the daily conditions in which many dogs are forced to live, and the killing and maiming of bait animals, such as rabbits, during training exercises.”¹⁸⁵ In 2006, approximately 14,800 greyhounds were rescued and adopted, while an estimated 8,567 were killed, including dogs that were bred but were not suitable for racing and dogs that could no longer race.¹⁸⁶

Those involved in the greyhound racing industry argue that the alleged abuse of racing dogs “defies logic” and “financial feasibility” because racing dog owners must spend “hundreds of thousands, and even millions of dollars on the breeding, raising[,] and acquisition” of their animals, and thus they would not “deliberately or ignorantly subject them to” physical abuse.¹⁸⁷ With attendance at greyhound races dropping, seven states¹⁸⁸ banned live greyhound racing in the 1990s.¹⁸⁹ As of November 2008, there were thirty-two live racing greyhound race-tracks in eleven states.¹⁹⁰ Two of these states considered changing their dog racing laws in 2008.¹⁹¹

1. Massachusetts

Massachusetts has two operating greyhound tracks.¹⁹² During Massachusetts’ 2007–2008 legislative session, the legislature considered a bill to ban commercial dog racing, but it died in committee.¹⁹³

¹⁸⁴ Humane Socy. U.S., *Greyhound Racing Facts*, http://www.hsus.org/pets/issues_affecting_our_pets/running_for_their_lives_the_realities_of_greyhound_racing/greyhound_racing_facts.html (last accessed Apr. 12, 2009).

¹⁸⁵ *Id.*

¹⁸⁶ Greyhound Network News & the Greyhound Protection League, *U.S. Greyhound Racing Fact Sheet* ¶ 13, http://www.rescuedgreyhounds.com/home/GPL-One_Page_Fact_Sheet.pdf (April 2007) (last accessed Apr. 12, 2009).

¹⁸⁷ Dennis McKeon, The Greyhound Racing Assn. Am., Inc., *As Nature Designed Them – Greyhound Racing*, http://www.gra-america.org/the_sport/articles/a_nature.html (last accessed Feb. 24, 2009).

¹⁸⁸ Humane Socy. U.S., *Greyhound Racing Facts*, *supra* n. 184 (Idaho, Maine, North Carolina, Nevada, Vermont, Virginia, and Washington).

¹⁸⁹ *Id.*

¹⁹⁰ Greyhound Network News, *Greyhound Racetracks Operating in North America as of November 2008*, http://www.greyhoundnetworknews.org/Racetrack_List_NOV%202008.pdf (last accessed Apr. 12, 2009) (the thirteen states with greyhound tracks are Alabama, Arizona, Arkansas, Colorado, Florida, Iowa, Kansas, Massachusetts, New Hampshire, Rhode Island, Texas, West Virginia, and Wisconsin).

¹⁹¹ Mass. H. 320, 186th Gen. Ct. (Dec. 18, 2006) (available at <http://www.mass.gov/legis/185history/h00320.htm>) (last accessed Apr. 12, 2009); N.H. Rev. Stat. Ann. § 644:8 (West 2008).

¹⁹² Stephanie Ebbert, *Bid to Ban Dog Racing Succeeds on 2d Try*, http://www.boston.com/news/local/massachusetts/articles/2008/11/05/bid_to_ban_dog_racing_succeeds_on_2d_try/ (Nov. 5, 2008) (last accessed Apr. 12, 2009).

¹⁹³ Mass. H. 320, 186th Gen. Ct.; Mass. Legis., *House, No. 320*, <http://www.mass.gov/legis/185history/h04638.htm> (last accessed Apr. 12, 2009).

The people of Massachusetts, however, banned dog racing by ballot measure in November 2008.¹⁹⁴ The ban will take effect in 2010.¹⁹⁵ Opponents of the ballot initiative argued that banning greyhound racing “put[s] the needs of dogs before the needs of people” because some 1,000 people working at greyhound racetracks in the state would lose their jobs.¹⁹⁶

After voters approved the ban, one Massachusetts representative stated that he plans to urge Governor Deval Patrick to install slot machines at the former greyhound racetracks so that they do not have to shut down, and the state’s economy will not suffer.¹⁹⁷ Another issue is what to do with the racing greyhounds once the ban becomes effective.¹⁹⁸ Owners can either put their dogs up for adoption or move to a state that has not yet banned greyhound racing.¹⁹⁹ Adoption is a readily available option because many greyhound rescue organizations offer services for people who want to adopt former racing dogs.²⁰⁰

2. New Hampshire

Like Massachusetts, New Hampshire also has two greyhound racing tracks.²⁰¹ In 2008, New Hampshire passed a bill removing the exemption for dog and horse racing in its animal cruelty laws and allowing law enforcement officials to take dogs and horses from racetracks into protective custody in cases of animal cruelty.²⁰² Two New Hampshire legislators plan to propose further changes in 2009.²⁰³ One proposes a ban on dog racing to take effect over two years.²⁰⁴ The other wants to change the state’s current law so that race tracks can show television simulcasts of dog racing without being required to have live dog races.²⁰⁵

¹⁹⁴ Ebbert, *supra* n. 192.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ WBZ, *What’s Next for Greyhound Race Tracks?*, <http://wbztv.com/local/question.3.greyhound.2.856279.html> (Nov. 5, 2008) (last accessed Apr. 12, 2009).

¹⁹⁸ See generally Greyhound Network News, *Mile High Greyhound Park Ends Live Racing; Hundreds of Greyhounds Displaced*, 57 Greyhound Network News 8 (Spring/Summer 2008) (when one racetrack closed in Colorado in 2008, approximately 700 greyhounds were displaced).

¹⁹⁹ Hannah Lally, *Closing Tracks in Mass. Could Leave Greyhounds Homeless*, http://www.wirenh.com/News/News_-_general/closing_tracks_in_Mass._could_leave_greyhounds_homeless_200811283255.html (Nov. 28, 2008) (last accessed Apr. 12, 2009).

²⁰⁰ See GREY2K USA, *Adoption Links*, <http://www.grey2kusa.org/adoption/links.html> (last accessed Apr. 12, 2009) (providing links to agencies adopting retired greyhounds in each state).

²⁰¹ N. H. Bus. Rev., *Lawmakers Set Sights on Dog Racing*, <http://www.nhbr.com/apps/pbcs.dll/article?AID=/20081231/NEWS06/812299971> (Dec. 31, 2008) (last accessed Apr. 12, 2009).

²⁰² N.H. Rev. Stat. Ann. § 644:8.

²⁰³ N. H. Bus. Rev., *supra* n. 201.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

E. Puppy Mills

Puppy mills are “breeding operations that mass produce puppies in factory style settings for sale at pet stores, directly to unsuspecting customers, and over the Internet.”²⁰⁶ The federal AWA provides oversight for commercial breeders, but specifically exempts operations that sell directly to the public, including pet stores.²⁰⁷

Dogs that live in puppy mills are continuously bred to produce two litters of puppies during each of their reproductive years from the age of 6 or 7 months until the age of 8 years.²⁰⁸ During this time, the dogs are often kept in rows of cages.²⁰⁹

The dogs are given basic care including food, water, and shelter, but receive only the basic level of veterinary care, leaving the dogs with “untreated bite wounds, pneumonia, heat stroke, ear infections, blindness, malnutrition, splayed and swollen feet, rotted teeth[,] and mange.”²¹⁰ The puppies are often shipped across the country in tractor trailers where many die en route.²¹¹ Those that arrive alive often have health and behavioral problems.²¹²

Some states have passed laws regulating these businesses.²¹³ HSUS notes that an effective breeding facility law should include the following provisions:

[Applies] to all breeding operations with animals or animal sales numbering over a specified threshold.

[Requires] a licensing fee and pre-inspection.

[Includes] routine, unannounced inspections at least twice yearly.

[Is] enforced by an agency with adequate funding and properly trained and tested staff.

[Rotates] inspectors to cover different areas of the state.

[Is] equipped with strong penalties when facilities are in repeated non-compliance, including but not limited to cease and desist orders.²¹⁴

²⁰⁶ Humane Socy. U.S., *Approximately 300 Dogs Rescued from N.C. Puppy Mill*, http://www.hsus.org/pets/pets_related_news_and_events/nc_puppy_mill_020609.html (Feb. 6, 2009) (last accessed Apr. 12, 2009).

²⁰⁷ 7 U.S.C. §§ 2133, 2143 (2006).

²⁰⁸ Main Line Animal Rescue, *Puppy Mills*, <http://www.mainlinerescue.com/puppy-mills/factory-farming-dogs> (last accessed Apr. 12, 2009).

²⁰⁹ *Id.*

²¹⁰ *Id.*; Humane Socy. U.S., *Stop Puppy Mills, FAQs*, http://stoppupmills.org/frequently_asked_questions.html (last accessed Apr. 12, 2009).

²¹¹ Main Line Animal Rescue, *supra* n. 208.

²¹² *Id.*

²¹³ Humane Socy. U.S., *State Puppy Mill Laws*, <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf> (last accessed Apr. 12, 2009).

²¹⁴ Humane Socy. U.S., *Puppy Mill Laws: Where Does Your State Stand?*, http://www.hsus.org/legislation_laws/state_legislation/puppy_mill_laws_where_does_yo.html (last accessed Apr. 12, 2009).

In 2008, three states passed bills to regulate puppy mills more effectively.²¹⁵

1. Virginia

Virginia Governor Tim Kaine signed House Bill 538 into law on April 23, 2008.²¹⁶ The bill defines the category of “commercial dog breeders” under state law and provides for licensing, penalties, and other provisions to regulate the industry.²¹⁷ Breeders who have thirty or more adult females during any twelve-month period are subject to regulation and must have a business license.²¹⁸ They may not have more than fifty adult dogs at one time, they are subject to two inspections per year and ad hoc investigations, they must dispose of deceased animals legally, and they must keep records on each dog for five years.²¹⁹ In addition, pet shops may only sell or offer to sell dogs obtained from breeders licensed by the USDA pursuant to the AWA.²²⁰ Violations of these provisions constitute Class I misdemeanors.²²¹ This is the first law to limit the number of dogs that a breeder may keep.²²²

2. Louisiana

Louisiana’s House Bill 1193 became effective without the governor’s signature on August 15, 2008.²²³ The bill amends the state’s licensing requirements, limits the number of dogs breeders can have, and imposes penalties for violating these requirements.²²⁴ The state now requires any individual or business with five or more dogs that breeds and sells the dogs retail, wholesale, or to the public, to obtain a kennel license, instead of just having licenses for the individual dogs.²²⁵ In addition, it is now illegal to have more than seventy-five

²¹⁵ 3 Pa. Consol. Stat. Ann. § 459-207 (Westlaw current through Reg. Sess. Act 2008-132 and 2007–2008 Sp. Sess. No. 1 Act 2); La. Stat. Ann. § 3:2772 (2008); Va. Code Ann. §§ 3.2-6507.1–3.2-6507.6 (Lexis 2008).

²¹⁶ Va. Gen. Assembly, *HB 538 Commercial Dog Breeders; Definition, Requirements, Penalty*, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=081&typ=bil&val=hb538> (last accessed Apr. 12, 2009).

²¹⁷ Va. H. 538, 2008 Reg. Sess. (Jan. 7, 2008) (available at <http://leg1.state.va.us/cgi-bin/legp504.exe?081ûl+CHAP0852¶df>) (last accessed Apr. 12, 2009).

²¹⁸ Va. Code Ann. §§ 3.2-6500, 3.2-6507.1 (2008).

²¹⁹ *Id.* at §§ 3.2-6507.2, 3.2-6507.3, 3.2-6555.

²²⁰ *Id.* at § 3.2-6511.1(A)–(B).

²²¹ *Id.* at §§ 3.2-6507.5, 3.2-6511.1(C).

²²² Press Release, Humane Socy. U.S., *States Pass Record Number of Animal Protection Laws in 2008*, (Dec. 4, 2008) (available at http://www.hsus.org/press_and_publications/press_releases/animal_protection_legislation_roundup_2008_120408.html) (last accessed Apr. 12, 2009).

²²³ La. St. Legis., *HB 1193-2008 Regular Session (Act 894)*, <http://www.legis.state.la.us/select> Session Info, *select* 2008 Regular Legislative Session, *search* “1193,” *select* History (last updated July 9, 2008) (last accessed Feb. 19, 2009).

²²⁴ La. H. 1193, 2008 Reg. Sess. § 2772(G)–(I) (Apr. 21, 2008) (available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=504839>) (last accessed Apr. 12, 2009).

²²⁵ La. Stat. Ann. § 3:2772(G).

dogs over the age of one year for breeding purposes.²²⁶ A violation of these provisions constitutes a misdemeanor punishable by a fine up to \$500, imprisonment up to six months, or both.²²⁷

3. *Pennsylvania*

In response to a billboard asking her to cover the topic near her studio in Chicago, Oprah Winfrey aired an investigation of puppy mills on her show in April 2008.²²⁸ The show had a dramatic and direct impact, causing adoption rates at shelters to increase and sales and profits at commercial breeders to decrease.²²⁹ During the episode, hidden cameras toured puppy mills in Pennsylvania.²³⁰ Ms. Winfrey asked Pennsylvania residents to contact their state legislators to urge them to support bills to update the state's regulation of puppy mills.²³¹

On October 9, 2008, Pennsylvania governor Edward Rendell signed House Bill 2525 into law.²³² The bill amended the Dog Law, the state's comprehensive law concerning companion animals,²³³ to include provisions relating to puppy mills.²³⁴ The Dog Law now requires licenses for kennels, and the licensing fee varies depending on how many dogs the kennel houses or sells, from under fifty to more than 250.²³⁵ There is no limit on how many dogs a kennel can house.²³⁶ The kennel owner must keep records on each dog for two years.²³⁷ Under the Dog Law, in-state and out-of-state dealers must also be licensed.²³⁸

Many of the provisions originally found in House Bill 2525 were lost during the legislative process.²³⁹ These included classification as a "commercial kennel" if the kennel sold or transferred more than sixty

²²⁶ *Id.* at § 3:2772(H).

²²⁷ *Id.* at § 3:2772(I).

²²⁸ Oprah.com, *Investigating Puppy Mills*, http://www.oprah.com/slideshow/oprahshow/slideshow1_ss_global_20080404/1 (last accessed Apr. 12, 2009); Main Line Animal Rescue, *Oprah Asks Residents of Pennsylvania to Contact Their State Legislators and Urge Them to Support House Bills 2525 and 2532*, <http://www.mainlinerescue.com/stories1> (last accessed Apr. 12, 2009).

²²⁹ Oprah.com, *supra* n. 228.

²³⁰ *Id.*

²³¹ Main Line Animal Rescue, *supra* n. 208.

²³² Pa. Gen. Assembly, *Bill Information*, http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2007&sind=0&body=H&type=B&bn=2525 (last accessed Apr. 12, 2009).

²³³ 3 Pa. Consol. Stat. Ann. § 459-101.

²³⁴ Penn. H. 2525, 2007–2008 Reg. Sess. § 206 (May 13, 2008) (available at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=2525&pn=4524>) (last accessed Apr. 12, 2009).

²³⁵ 3 Pa. Consol. Stat. Ann. § 459-206.

²³⁶ *Id.*

²³⁷ *Id.* at § 459-207.

²³⁸ *Id.* at § 459-209.

²³⁹ *Compare* Penn. H. 2525, 2007–2008 Reg. Sess. at §§ 459-102, 459-207 with 3 Pa. Consol. Stat. Ann. § 459-206.

dogs in a calendar year.²⁴⁰ House Bill 2525 authorized the State Secretary of Agriculture to impose civil penalties and issue cease and desist orders.²⁴¹ The bill allowed a person who received a cease and desist order to keep twenty-five of the dogs, but required him to divest the others in the manner prescribed by the State Department of Agriculture in its cease and desist order.²⁴²

Originally, House Bill 2525 also required commercial kennels to provide enclosures for the dogs that meet minimum standards, including space and lighting requirements, and to provide veterinary care according to a written program including examination and vaccination schedules, a protocol for disease control and prevention, pest and parasite control, nutrition, emergency care, and euthanasia.²⁴³ The original bill also provided for creation of a Canine Health Board to determine standards for kennels.²⁴⁴

Under the enforcement scheme proposed in House Bill 2525, authorities could pursue civil or criminal penalties.²⁴⁵ Courts could also order the equitable remedies of preliminary injunction, special injunction, or issuance of a temporary restraining order.²⁴⁶ Instead, violations of the provisions of House Bill 2525, as passed, are enforced under the preexisting penalty scheme of the Dog Law.²⁴⁷ A violation of the Dog Law is punished as a summary offense, and if the person violates the Dog Law a second time within a year of the first violation, the violation is a third degree misdemeanor.²⁴⁸

²⁴⁰ Penn. H. 2525, 2007–2008 Reg. Sess. at § 459-102.

²⁴¹ *Id.* at § 459-207.

²⁴² *Id.*

²⁴³ *Id.* at § 459-207.

²⁴⁴ *Id.* at § 459-221.

²⁴⁵ *Id.* at § 459-903(g).

²⁴⁶ Penn. H. 2525, 2007–2008 Reg. Sess. at § 459-903(e).

²⁴⁷ 3 Pa. Stat. Ann. § 459-903.

²⁴⁸ *Id.*

