

## 2009 LEGISLATIVE REVIEW

By  
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### REVIEW EDITOR'S NOTE

It is my pleasure to introduce the twelfth annual edition of *Animal Law's* Legislative Review. This Review discusses animal-related legislation that the federal and state legislatures considered during their legislative sessions in 2009.

This Review is intended to serve not only as a discussion of the legislative developments that occurred in the past year, but also as an educational tool for those interested in learning more about animal law issues. We hope that our analysis of 2009's legislative developments provides our readers with valuable information regarding the process of proposing and passing animal-related legislation. We also hope our analysis will help develop the field of animal law. As always, *Animal Law* welcomes any comments or suggestions for future editions of the Legislative Review.

*Robin C. McGinnis*  
*Legislative Review Editor*

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I. FEDERAL LEGISLATION

This discussion is limited to selected legislation introduced during the 111th Congress. Because the 111th Congress has not yet adjourned, it is not known which bills may pass during this legislative session, nor is it known which legislation, if any, will be reintroduced in the 112th Congress.

A. Bears

1. *Importation of Polar Bear Trophies*

Congress enacted the Marine Mammal Protection Act (MMPA)<sup>1</sup> in 1972 to protect marine mammals and their habitat from the detrimental effects of human activities and to maintain the health and stability of marine ecosystems.<sup>2</sup> The MMPA imposes a moratorium on the importation of marine mammals and their body parts into the United States and specifically lists the polar bear as an example of a protected marine mammal.<sup>3</sup> A 1994 amendment weakened the moratorium by permitting the importation of certain polar bear trophies from sport hunts in Canada,<sup>4</sup> but full protection under the MMPA was restored in May 2008 when polar bears were listed as a threatened species under the Endangered Species Act of 1973 (ESA).<sup>5</sup> An animal listed under the ESA is considered to be “depleted” for purposes of the MMPA,<sup>6</sup> which prohibits importation of depleted species into the U.S.<sup>7</sup>

However, in 2009, Representative Don Young (R-Alaska) introduced two bills, H.R. 1054 and H.R. 1055,<sup>8</sup> that would again exempt certain polar bear body parts obtained in Canadian sport hunts from

<sup>1</sup> 16 U.S.C. § 1361 (2006).

<sup>2</sup> *Id.* at § 1361(6).

<sup>3</sup> 16 U.S.C. § 1372(a)(3), (c) (2006).

<sup>4</sup> Born Free USA, *H.R. 1054 Polar Bear Importation*, <http://www.bornfreeusa.org/legislation.php?p=2124&more=1> (last accessed Mar. 13, 2010).

<sup>5</sup> 73 Fed. Reg. 28212, 28278 (May 15, 2008).

<sup>6</sup> H.R. Subcomm. on Insular Affairs, Oceans & Wildlife of the Nat. Resources Comm., *Testimony of Rowan Gould, Deputy Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior on H.R. 1054*, 111th Cong. 2 (Sept. 22, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony\\_gould.pdf](http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony_gould.pdf) (last accessed Mar. 13, 2010)).

<sup>7</sup> 16 U.S.C. § 1372(b)(3) (2006).

<sup>8</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* “HR1054”; *select* All Information (last accessed Mar. 13, 2010); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* “HR1055”; *select* All Information (last accessed Mar. 13, 2010).

protection under the MMPA.<sup>9</sup> Senator Mike Crapo (R-Idaho) followed suit by introducing a similar bill, Sen. 1395.<sup>10</sup>

H.R. 1054 proposes to amend the MMPA to allow importation of polar bear trophies that were legally obtained in sport hunts in Canada prior to May 15, 2008, which is the date the polar bear was listed as a threatened species under the ESA.<sup>11</sup> This bill would purportedly only apply to approximately forty-two polar bear trophies harvested prior to May 15, 2008, that were banned from importation due to the listing of the polar bear as a threatened species.<sup>12</sup> Sen. 1395 is closely related to H.R. 1054<sup>13</sup> and contains substantively similar language.<sup>14</sup>

H.R. 1055 would impose broader changes to the MMPA than H.R. 1054 or Sen. 1395. While H.R. 1054 and Sen. 1365 only apply to trophies obtained prior to the listing of the polar bear, H.R. 1055 would amend the MMPA to allow importation of *all* polar bear trophies obtained during sport hunts in Canada in the future, assuming proper permits are obtained.<sup>15</sup> In other words, H.R. 1055 essentially removes polar bear body parts from the MMPA's import moratorium.

Proponents of the bills argue that because hunting polar bears is legal in Canada, if hunters comply with Canadian laws, they should be allowed to bring their trophies into the United States.<sup>16</sup> Some proponents complain that because the threatened species listing became effective immediately, hunters did not have adequate notice of the change in the status of polar bears and were therefore unable to im-

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<sup>9</sup> H.R. 1054, 111th Cong. § 1 (Feb. 12, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1054"; *select* Text of Legislation (last accessed February 19, 2010)); H.R. 1055, 111th Cong. § 2 (Feb. 12, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1055"; *select* Text of Legislation (last accessed Mar. 13, 2010)).

<sup>10</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "S1395"; *select* All Information (last accessed Mar. 13, 2010).

<sup>11</sup> H.R. 1054, 111th Cong. at § 1.

<sup>12</sup> H.R. Subcomm. on Insular Affairs, Oceans & Wildlife of the Nat. Resources Comm., *Written Testimony Submitted by Dr. William E. Moritz, Director of Conservation, Safari Club International Foundation, Acting Director of Government Affairs, Safari Club International on H.R. 1054*, 111th Cong. 1–2 (Sept. 22, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony\\_mortiz.pdf](http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony_mortiz.pdf) (last accessed Mar. 13, 2010)) [hereinafter H.R. Subcomm. on Insular Affairs, *Moritz Statement*]; Natl. Rifle Assn., *NRA Urges Continued Importation of Legally Hunted Polar Bears*, <http://www.nrahunterrights.org/Article.aspx?id=1682> (last updated Oct. 20, 2009) (last accessed Mar. 13, 2010).

<sup>13</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1054"; *select* Related Bills (last accessed Mar. 13, 2010).

<sup>14</sup> *See* Sen. 1395, 111th Cong. § 1 (July 6, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* "S1395"; *select* Text of Legislation (last accessed Mar. 13, 2010)).

<sup>15</sup> H.R. 1055, 111th Cong. at § 2.

<sup>16</sup> Natl. Rifle Assn., *supra* n. 12.

port trophies that were legally obtained prior to the listing date.<sup>17</sup> Had there been a customary thirty-day delay in implementation, proponents argue, hunters would have had an opportunity to import the trophies they had already obtained.<sup>18</sup> Proponents also argue that the bills would provide needed revenue to both native communities and conservation research programs through permit fees.<sup>19</sup> They contend the legislation would not result in increased mortality of polar bears because any unused hunting permits are used by local natives for subsistence hunting.<sup>20</sup>

Opponents argue that passage of the bills would send the wrong message about U.S. conservation efforts while simultaneously undermining the protective relationship federal law provides to polar bears through the interplay of the ESA and the MMPA.<sup>21</sup> They assert that the current ban on imports provides an important disincentive against participation in polar bear hunts because U.S. hunters cannot bring their trophies back into the country,<sup>22</sup> and H.R. 1054 and H.R. 1055 would eliminate this deterrent. Additionally, opponents point out that the U.S. Fish and Wildlife Service proposed listing the polar bear as a threatened species in January 2007.<sup>23</sup> Therefore, they argue, individuals who harvested polar bears in early 2008 had notice of the proposed change and voluntarily assumed the risk that their import permits may be denied.<sup>24</sup>

Opponents of the bills also point to evidence of the species' vulnerability: shrinking polar bear habitat due to melting sea ice, as well as elevated levels of mortality and stress the bears face in the wild.<sup>25</sup> They argue that, because of these long-term, human-caused threats to

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<sup>17</sup> See e.g. H.R. Subcomm. on Insular Affairs, Oceans & Wildlife of the Nat. Resources Comm., *Statement of Roger E. Oerter, Major, USAF, retired, on H.R. 1054*, 111th Cong. 1-2 (Sept. 22, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony\\_oerter.pdf](http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony_oerter.pdf) (last accessed Mar. 13, 2010)).

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

<sup>19</sup> Natl. Rifle Assn., *supra* n. 12.

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

<sup>21</sup> H.R. Subcomm. on Insular Affairs, Oceans & Wildlife of the Nat. Resources Comm., *Testimony of Howard M. Crystal on H.R. 1053*, 111th Cong. 4 (Sept. 22, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony\\_crystal.pdf](http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony_crystal.pdf) (last accessed Mar. 13, 2010)) [hereinafter H.R. Subcomm. on Insular Affairs, *Crystal Statement*] (This testimony is filed under H.R. 1053, presumably because Mr. Crystal states that he is testifying about H.R. 1053. However, H.R. 1053 relates to entirely different subject matter, and it is clear from the content of Mr. Crystal's testimony that he is actually referring to H.R. 1054 or 1055.).

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

<sup>23</sup> H.R. Subcomm. on Insular Affairs, Oceans & Wildlife of the Nat. Resources Comm., *Testimony of Michael Markarian, Chief Operating Officer, The Humane Society of the United States, on H.R. 1054*, 111th Cong. 3 (Sept. 22, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony\\_markarian.pdf](http://resourcescommittee.house.gov/images/Documents/20090922/oceans/testimony_markarian.pdf) (last accessed Mar. 13, 2010)).

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

<sup>25</sup> Humane Socy. of the U.S., *Polar Bears: Already on Thin Ice, Now Threatened by Trophy Hunters*, [http://www.hsus.org/wildlife\\_abuse/campaigns/safari\\_club\\_interna-](http://www.hsus.org/wildlife_abuse/campaigns/safari_club_interna-)

its existence, the polar bear was listed as a threatened species.<sup>26</sup> Therefore, repealing the ban on imports would send precisely the wrong message about conservation of species: that sport hunting is more important than the long-term preservation of a species threatened with extinction.<sup>27</sup>

Congress has not voted on any of the three bills. In February 2009, H.R. 1054 and H.R. 1055 were referred to the Subcommittee on Insular Affairs, Oceans and Wildlife within the House Committee on Natural Resources.<sup>28</sup> Subcommittee hearings were held on H.R. 1054 in September 2009,<sup>29</sup> and no action has been taken on H.R. 1055.<sup>30</sup> In July 2009, Sen. 1395 was referred to the Committee on Commerce, Science, and Transportation, where it remains.<sup>31</sup>

## 2. *Bear Protection Act of 2009*

In contrast to the bills discussed above, which would loosen restrictions on importation of polar bear body parts, another piece of legislation introduced in 2009 would increase restrictions on transportation of certain bear parts via interstate or international channels of commerce. The Bear Protection Act of 2009, introduced by Representatives Raul Grijalva (D-Ariz.) and John Campbell (R-Cal.), prohibits the importation, exportation, and interstate sale and trade of bear viscera and products containing bear viscera.<sup>32</sup> Bear viscera includes body fluids and internal organs.<sup>33</sup> Despite widespread bipartisan support for the measures among members of both houses of

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tional/polar\_bears\_threatened.html (last updated Feb. 2, 2009) (last accessed Mar. 13, 2010).

<sup>26</sup> H.R. Subcomm. on Insular Affairs, *Crystal Statement*, *supra* n. 21, at 3.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1054"; *select* All Congressional Actions (last accessed Mar. 13, 2010) [hereinafter THOMAS HR1054 All Congressional Actions]; Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1055"; *select* All Congressional Actions (last accessed Mar. 13, 2010).

<sup>29</sup> THOMAS HR1054 All Congressional Actions, *supra* n. 28.

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

<sup>31</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "S1395"; *select* All Congressional Actions (last accessed Mar. 13, 2010).

<sup>32</sup> H.R. 3480, 111th Cong. § 5 (July 31, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* "HR3480"; *select* Text of Legislation) (last accessed Mar. 13, 2010).

<sup>33</sup> *Id.* at § 4(1).

Congress,<sup>34</sup> similar legislation has been unsuccessfully introduced several times during the past fifteen years.<sup>35</sup>

The Act was proposed in response to illegal poaching of bears in the U.S. that is fueled by a lucrative international black market in bear parts.<sup>36</sup> Supporters of the bill argue that the legislation will conserve U.S. bear populations by deterring poachers.<sup>37</sup> Across the United States and abroad, poachers kill bears for their gallbladders and bile, which are used in Asia and Asian communities in the U.S. to create folk medicines and cosmetic products.<sup>38</sup> A gallbladder can fetch thousands of dollars on the black market,<sup>39</sup> and bear paws are coveted for use in expensive soups.<sup>40</sup> Although the Lacey Act,<sup>41</sup> existing federal legislation, prohibits the interstate and international transport of wildlife in violation of state law, it is not always an effective tool for preventing poaching because state laws vary widely.<sup>42</sup> If a poacher kills a bear in a state that prohibits trade in bear parts, the poacher can avoid prosecution by transporting the body to a state that does permit it.<sup>43</sup> Although such transporting is illegal, a prosecutor must prove that the bear was illegally killed in a state that prohibits commerce in bear parts, which can be very difficult to do.<sup>44</sup> The Bear Protection Act would close this loophole by providing federal legislation governing the transport of bear parts, thus eliminating the need to rely

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<sup>34</sup> See e.g. Adam M. Roberts & Nancy V. Perry, *Throwing Caution to the Wind: The Global Bear Parts Trade*, 6 Animal L. 129, 145 (2000) (describing widespread bipartisan support in Congress for the ultimately unsuccessful Bear Protection Act of 2000); Lib. Cong., THOMAS, *Search Bill Summary and Status for the 107th Congress*, <http://thomas.loc.gov/bss/d107query.html>; select Bill Number, search "HR397"; select Cosponsors (last accessed Mar. 13, 2010) (showing 191 House cosponsors); Lib. Cong., THOMAS, *Search Bill Summary and Status for the 107th Congress*, <http://thomas.loc.gov/bss/d107query.html>; select Bill Number, search "S1125"; select Cosponsors (last accessed Mar. 13, 2010) (showing fifty-one Senate cosponsors).

<sup>35</sup> Lib. Cong., THOMAS, *Search Multiple Congresses*, <http://thomas.loc.gov/home/multicongress/multicongress.html>; search "Bear Protection Act"; select Check All (last accessed Mar. 13, 2010).

<sup>36</sup> Humane Socy. of the U.S., *Congress Aims to End the Black Market in Bear Parts*, [http://www.humanesociety.org/news/press\\_releases/2009/07/congress\\_aims\\_to\\_end\\_black\\_market\\_in\\_bear\\_parts\\_073109.html](http://www.humanesociety.org/news/press_releases/2009/07/congress_aims_to_end_black_market_in_bear_parts_073109.html) (July 31, 2009) (last accessed Mar. 13, 2010).

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

<sup>38</sup> Born Free USA, *Stop the Trade in Bear Parts*, [http://www.bornfreeusa.org/a9a\\_bears.php](http://www.bornfreeusa.org/a9a_bears.php) (last accessed Mar. 13, 2010).

<sup>39</sup> Encyclopædia Britannica's Advocacy for Animals, *Bears on the Brink*, <http://advocacy.britannica.com/blog/advocacy/2007/09/bears-on-the-brink> (Sept. 3, 2007) (last accessed Mar. 13, 2010).

<sup>40</sup> *Id.*

<sup>41</sup> 16 U.S.C. §§ 3371-3378 (2006).

<sup>42</sup> *Id.* at § 3372(a)(1); Roberts & Perry, *supra* n. 34, at 143-44.

<sup>43</sup> Roberts & Perry, *supra* n. 34, at 144.

<sup>44</sup> *Id.*

on a patchwork of state laws to control illegal poaching of bears in the U.S.<sup>45</sup>

Although the Bear Protection Act specifies that it does not interfere with the lawful sport hunting of bears, many sport hunting associations have opposed similar legislation in the past.<sup>46</sup> Safari Club International declared a previous Bear Protection Act to be “anti-hunting” legislation<sup>47</sup> and argues that the Lacey Act is adequate to protect bears from poaching.<sup>48</sup>

The Bear Protection Act of 2009 was referred for consideration to the House Committee on Natural Resources, the Committee on Foreign Affairs, and the Ways and Means Committee.<sup>49</sup> The bill remains in committee, and no action has been taken on it since August 2009.<sup>50</sup>

### B. Shark Finning

Shark fins are coveted in Asia for use in shark fin soup, which is considered a delicacy and can sell for as much as \$200 per bowl.<sup>51</sup> The demand for shark fins has led to an increase in the controversial practice of shark finning, a process in which fishermen cut off a shark’s fins while at sea and discard the rest of the animal, often still alive, back into the ocean.<sup>52</sup> This increase in shark finning has caused reductions in shark populations by upwards of 70% over fifteen years within some species, according to marine biologists.<sup>53</sup> Moreover, loss of such significant numbers of large predators threatens the health of entire marine ecosystems.<sup>54</sup>

A decade ago, Congress passed the Shark Finning Prohibition Act (SFPA),<sup>55</sup> which banned shark finning.<sup>56</sup> Under the SFPA, fishermen are allowed to possess detached shark fins on board their vessel so long as the fins make up no more than 5% of the total weight of the shark carcasses on board, and provided that a corresponding carcass is pre-

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<sup>45</sup> Bear Protection Act of 2009 § 5 (H.R. 3480) (July 31, 2009); Humane Society of the United States, *Bear Protection Act of 2009*, [http://www.hsus.org/legislation\\_laws/federal\\_legislation/wildlife/bear\\_protection\\_act\\_of\\_2009.html](http://www.hsus.org/legislation_laws/federal_legislation/wildlife/bear_protection_act_of_2009.html) (last accessed Mar. 13, 2010).

<sup>46</sup> Natl. Rifle Assn., *Anti-Hunting “Bear Protection Act” Stalled—For Now*, <http://www.nrahuntersrights.org/Article.aspx?id=470> (last updated Oct. 21, 2009) (last accessed Mar. 13, 2010).

<sup>47</sup> The Hunting Wire, *SCI Helps Stop Anti-Hunting Legislation*, <http://www.thehuntingwire.com/docdetail.php?id=458> (Apr. 24, 2008) (last accessed Mar. 13, 2010).

<sup>48</sup> *Id.*

<sup>49</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov;select> Bill Number, search “HR3480”; *select* All Congressional Actions (last accessed Mar. 13, 2010).

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

<sup>51</sup> Juan Forero, *Hidden Cost of Shark Fin Soup: Its Source May Vanish*, 155 N.Y. Times A4 (Jan. 5, 2006) (available at <http://www.nytimes.com/2006/01/05/international/americas/05sharks.html> (Jan. 5, 2006) (last accessed Mar. 13, 2010)).

<sup>52</sup> 155 Cong. Rec. E21 (daily ed. Jan. 6, 2009).

<sup>53</sup> Forero, *supra* n. 51.

<sup>54</sup> 155 Cong. Rec. at E21.

<sup>55</sup> Pub. L. No. 106-557, 114 Stat. 2772 (2000).

<sup>56</sup> *Id.* at § 2.

sent for all fins aboard the vessel.<sup>57</sup> This complicated requirement has proven difficult to enforce,<sup>58</sup> and some individuals have found ways to circumvent the law.<sup>59</sup> One loophole allows fishermen to avoid the law by transferring shark fins from a fishing vessel to a shipping vessel while at sea.<sup>60</sup> Although this may appear to be a violation of the SFPA, the Ninth Circuit held that it was not.<sup>61</sup> Other fishermen avoid the law by throwing low-value fins and low-value carcasses back into the ocean and “matching” high-value fins and high-value carcasses with each other even though the parts may not be from the same species of shark.<sup>62</sup>

The Shark Conservation Act (SCA) was introduced in 2009 by Representative Madeleine Bordallo (D-Guam) in response to these perceived shortcomings of the SFPA.<sup>63</sup> The SCA closes loopholes in the SFPA by (1) requiring that all shark fins aboard a fishing vessel be naturally attached to the shark carcass and (2) banning the transfer of shark fins from vessel to vessel unless they are naturally attached to the carcass.<sup>64</sup> The bill establishes a rebuttable presumption that if fins are found on board a fishing vessel without a corresponding carcass, the fins must have been transferred in violation of the law.<sup>65</sup>

The bill’s sponsors argue the SCA simplifies enforcement of the finning prohibition.<sup>66</sup> The sponsors also highlight the importance of swiftly closing loopholes in the SFPA to protect shark species from overfishing and ensure that the health of marine ecosystems is maintained.<sup>67</sup> Proponents point to the cruel nature of shark finning as another reason swift passage of the SCA is necessary.<sup>68</sup> Not only are the shark’s fins cut off while it is still alive, but the animal is often cast

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<sup>57</sup> *Id.* at § 3(3)(iii).

<sup>58</sup> Humane Socy. of the U.S., *Fact Sheet: Support H.R. 81/S. 850 The Shark Conservation Act of 2009*, [http://www.hsus.org/web-files/PDF/legislation/sharks\\_hr81\\_s850.pdf](http://www.hsus.org/web-files/PDF/legislation/sharks_hr81_s850.pdf) (last accessed Mar. 13, 2010).

<sup>59</sup> 155 Cong. Rec. H2879–2880 (daily ed. Mar. 2, 2009).

<sup>60</sup> *Id.*

<sup>61</sup> *U.S. v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008).

<sup>62</sup> Humane Socy. of the U.S., *Fact Sheet: Support H.R. 81/S. 850*, *supra* n. 58 (describing “matching” process); Natl. Oceanic and Atmospheric Admin. News Online, *NOAA Partners With U.S. Fish and Wildlife Service to Help Sharks Keep Their Fins*, <http://www.noaanews.noaa.gov/stories2007/s2887.htm> (last accessed Feb. 18, 2010) (species of sharks with the most valuable fins are often different from species with the most valuable meat).

<sup>63</sup> 155 Cong. Rec. at E21.

<sup>64</sup> H.R. 81, 111th Cong. § 3 (Mar. 3, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* “HR81”; *select* Text of Bill (last accessed Feb. 18, 2010)).

<sup>65</sup> *Id.*

<sup>66</sup> 155 Cong. Rec. at E21.

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

<sup>68</sup> Animal Welfare Inst., *Shark Conservation Act of 2009 Approaches the Finish Line in the Senate*, <http://capwiz.com/compassionindex/issues/alert/?alertid=13210871> (last accessed Feb. 18, 2010).



back into the ocean.<sup>69</sup> Without its fins, the shark is unable to swim and sinks to the ocean bottom, where it dies.<sup>70</sup>

Opposition to the SCA appears to be minimal within the United States. However, the trade is a lucrative business abroad because the fins are still used in traditional cooking and medicine in some Asian countries.<sup>71</sup> Individuals in countries such as Ecuador make their living from the shark fin trade.<sup>72</sup> Trade groups contend that shark finning is a legitimate industry that does not compromise shark populations.<sup>73</sup>

The House of Representatives passed the SCA in March 2009.<sup>74</sup> In April 2009, Senator John Kerry (D-Mass.) introduced a related bill in the Senate, which was favorably reported by committee in November 2009.<sup>75</sup> The bill is now awaiting consideration by the full Senate.<sup>76</sup>

### C. Fur Labeling

Federal law requires that animal-fur garments sold in the United States be labeled with product information for the consumer, including the manufacturer, the species of animal that produced the fur, and the country of origin.<sup>77</sup> The law is designed to enable consumers to make informed purchasing decisions by disclosing whether the garment is made from real or faux fur.<sup>78</sup> However, the law includes an exception to this labeling requirement, which allows animal fur garments to go unlabeled if the value of the fur is less than \$150.<sup>79</sup> This means that many garments made with real fur are not required to be labeled as such. Legislation aimed at closing this loophole was introduced in 2009 by Senator Robert Menendez (D-N.J.) and Representative Jim Moran (D-Va.).<sup>80</sup> The Truth in Fur Labeling Act (TFLA) (H.R. 2480/Sen.

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<sup>69</sup> *Id.*

<sup>70</sup> Michael D. Lemonick, *Under Attack*, *Time* magazine (Aug. 11, 1997) (available at <http://www.time.com/time/magazine/article/0,9171,986820-1,00.html> (last accessed Mar. 26, 2010)); Jessica Spiegel, *Even Jaws Deserves to Keep His Fins: Outlawing Shark Finning Throughout Global Waters*, 24 B.C. Intl. & Comp. L. Rev. 409, 410 (2000–2001).

<sup>71</sup> See Forero, *supra* n. 51.

<sup>72</sup> *Id.*

<sup>73</sup> See Andrea Chiu, *Shark Fin Groups Hit Out at Critics' Claims*, *The Standard* (Nov. 12, 2005) (available at [http://www.thestandard.com.hk/news\\_detail.asp?pp\\_cat=11&art\\_id=5524&sid=5443608&con\\_type=1](http://www.thestandard.com.hk/news_detail.asp?pp_cat=11&art_id=5524&sid=5443608&con_type=1) (last accessed Feb. 18, 2010)).

<sup>74</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; select Bill Number, search "HR81," select All Congressional Actions (last accessed Mar. 26, 2010).

<sup>75</sup> 155 Cong. Rec. at E21.

<sup>76</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; select Bill Number, search "S850," select All Congressional Actions (last accessed Mar. 26, 2010).

<sup>77</sup> 15 U.S.C. § 69b(2) (2006).

<sup>78</sup> Office of Congressman Jim Moran, *Truth in Fur Labeling Act Introduced*, [http://moran.house.gov/list/press/va08\\_moran/FurLabel.shtml](http://moran.house.gov/list/press/va08_moran/FurLabel.shtml) (May 19, 2009) (last accessed Mar. 19, 2010).

<sup>79</sup> 155 Cong. Rec. E1200, 1201 (daily ed. May 19, 2009).

<sup>80</sup> Lib. Cong., THOMAS, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; select Bill Number, search "HR2480"; select All Information (last

1076) would remove the exception clause from the federal law and instead require labeling of *all* garments made with animal fur, regardless of value.<sup>81</sup>

Sponsors of the TFLA describe it as legislation that will protect consumers.<sup>82</sup> Proponents claim that the labeling loophole denies consumers the opportunity to make informed purchasing decisions, not just about what type of product they want to buy or where their dollars go, but also about whether they want to support a controversial practice.<sup>83</sup> Under current law, consumers who are allergic to fur or have ethical objections to wearing real animal fur are left to guess whether certain products contain real or faux fur.<sup>84</sup>

Although it is illegal to sell garments made with domestic cat or dog fur in the United States,<sup>85</sup> supporters of TFLA allege that some companies take advantage of the labeling exception to market cat- and dog-fur garments in the U.S.<sup>86</sup> As long as the value of the fur is less than \$150, companies are not required to label the garment, and it can slip into the United States despite the ban.<sup>87</sup>

Proponents of the bill also point to prevalent mislabeling of garments made with animal fur worth less than \$150 as a reason for the stricter labeling requirements of TFLA.<sup>88</sup> An investigation of garments containing fur worth less than \$150 conducted by the Humane Society of the United States found that 100% of the garments tested were either mislabeled or unlabeled.<sup>89</sup> The investigation revealed that several of the garments tested were real fur labeled as faux fur and also found three garments made with fur from domesticated dogs.<sup>90</sup>

Fur industry groups deny that any cruelty is involved with the harvesting of fur for fur garments, contending that the killing methods used on fur farms are humane and similar to the methods used by animal shelters.<sup>91</sup> These groups also deny that cat and dog fur are used in the fur trade in North America and contend that all fur prod-

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accessed Mar. 13, 2010); Lib. Cong., *THOMAS*, *Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "SB1076"; *select* All Information (last accessed Mar. 13, 2010).

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

<sup>82</sup> 155 Cong. Rec. at 1201.

<sup>83</sup> Humane Socy. of the U.S., *Congress Calls for Truth in Fur Labeling in Response to Ongoing Misrepresentation*, [http://www.hsus.org/press\\_and\\_publications/press\\_releases/congress\\_calls\\_for\\_truth\\_in\\_fur\\_labeling\\_052009.html](http://www.hsus.org/press_and_publications/press_releases/congress_calls_for_truth_in_fur_labeling_052009.html) (May 20, 2009) (last accessed Mar. 13, 2010).

<sup>84</sup> Humane Socy. of the U.S., *Fact Sheet*, <http://www.hsus.org/web-files/PDF/fur-labeling-hr2480-s1076.pdf> (last accessed Mar. 21, 2010).

<sup>85</sup> 19 U.S.C. § 1308(b)(1)(B) (2006).

<sup>86</sup> Office of Congressman Jim Moran, *supra* n. 78.

<sup>87</sup> Humane Socy. of the U.S., *Fact Sheet*, *supra* n. 84.

<sup>88</sup> Humane Socy. of the U.S., *Congress Calls for Truth in Fur Labeling*, *supra* n. 83.

<sup>89</sup> Humane Socy. of the U.S., *Fact Sheet*, *supra* n. 84.

<sup>90</sup> *Id.*

<sup>91</sup> Fur Harvesters Auction, Inc., *Myths & Facts of the Fur Industry*, <http://www.furharvesters.com/mythfact.htm> (last accessed Mar. 13, 2010).

ucts meet applicable labeling requirements.<sup>92</sup> Industry representatives also stress that the production of fur in the United States is already heavily regulated, and that the raw materials used in fur garments, including those imported from China, are farmed legally.<sup>93</sup>

In May 2009, the House version of the TFLA was referred to the Committee on Energy and Commerce, where it remains.<sup>94</sup> Also in May, the Senate version of the bill was referred to the Committee on Commerce, Science, and Transportation, where it remains.<sup>95</sup> No further action has been taken on either bill. Similar bills were introduced in both the Senate and the House during past congressional sessions, but they died in committee.<sup>96</sup>

#### D. Horses

##### 1. Horse Transportation Safety Act

Representative Mark Kirk (R-Ill.) reintroduced the Horse Transportation Safety Act of 2009 (HTSA) in the 111th Congress as H.R. 305.<sup>97</sup> The bill was first introduced in the 110th Congress after an incident in which a double-decker cattle truck carrying fifty-nine draft horses overturned, killing or fatally injuring eighteen horses.<sup>98</sup>

This accident was not the first of its kind. According to Representative Kirk, accidents of a similar scale occur almost annually.<sup>99</sup> The HTSA would prohibit the interstate transport of horses in a multi-level

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<sup>92</sup> Intl. Fur Trade Fedn., *Fact Sheet: Felis Catus and Canis Familiaris*, <http://www.iftf.com/#/facts-sheets/6>; *select Felis Catus and Canis Familiaris* (last accessed Mar. 21, 2010).

<sup>93</sup> Betsy Gregg, *Aspen Times*, *The Facts about Fur*, <http://www.aspentimes.com/article/20090701/LETTER/906309970> (last updated July 1, 2009) (last accessed Mar. 13, 2010).

<sup>94</sup> Lib. Cong., *THOMAS Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select Bill Number*, *search "HR2480"*; *select All Congressional Actions* (last accessed Mar. 13, 2010).

<sup>95</sup> Lib. Cong., *THOMAS Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select Bill Number*, *search "S1076"*; *select All Congressional Actions* (last accessed Mar. 13, 2010).

<sup>96</sup> Lib. Cong., *THOMAS Advanced Bill Summary & Status Search for the 110th Congress*, <http://thomas.loc.gov/bss/d110query.html>; *search "fur labeling"*; *select S. 3610*, *select All Congressional Actions* (last accessed Mar. 13, 2010); Lib. Cong., *THOMAS Advanced Bill Summary & Status Search for the 109th Congress*, <http://thomas.loc.gov/bss/d109query.html>; *search "fur labeling"*; *select All Congressional Actions* (last accessed Mar. 13, 2010).

<sup>97</sup> Lib. Cong., *THOMAS Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select Bill Number*, *search "HR305"*; *select All Information* (last accessed Mar. 13, 2010).

<sup>98</sup> 154 Cong. Rec. E1251 (daily ed. Jun. 17, 2009); *see also* Jeff Long, Tara Malone & Andrew Wang, *Horses Mending after Trailer Crash; Illinois, Federal Officials Join Probe*, [http://archives.chicagotribune.com/2007/oct/30/news/chi-horsecrash\\_30oct30](http://archives.chicagotribune.com/2007/oct/30/news/chi-horsecrash_30oct30) (Oct. 30, 2007) (last accessed Mar. 21, 2010) (describing the crash and the reaction to the crash).

<sup>99</sup> Office of Congressman Mark Kirk, *Kirk Calls for Ban on Deadly Horse Trailers*, [http://kirk.house.gov/index.php?option=com\\_content&task=view&id=146&Itemid=89](http://kirk.house.gov/index.php?option=com_content&task=view&id=146&Itemid=89) (Sept. 7, 2008) (last accessed Mar. 13, 2010).

vehicle and would impose civil penalties of \$100 to \$500 per horse for violations of the ban.<sup>100</sup>

The safety of utilizing double-decker trucks to transport horses has long been questioned. Double-deck trailers are top-heavy and can roll easily.<sup>101</sup> The United States Department of Agriculture (USDA) has stated that double-deck trailers are not safe for transporting horses<sup>102</sup> and passed a regulation banning the use of two-tiered trailers for transporting horses to slaughter.<sup>103</sup> The USDA regulation does not cover the transportation of horses for reasons other than slaughter, but the HTSA would fill this gap if enacted.

In addition to safety concerns, proponents of the HTSA argue that the use of double-deck trailers for transporting horses is inhumane.<sup>104</sup> Findings of the American Veterinary Medicine Association (AVMA)<sup>105</sup> and the USDA<sup>106</sup> support this argument. Two-tiered trailers are designed to hold smaller livestock such as hogs and cattle, and the head room in these trailers does not meet recommended AVMA or USDA standards for the safe and comfortable transport of horses.<sup>107</sup> According to animal advocates, not only do the low ceilings cause horses discomfort, but they can also cause horses to sustain head injuries when the animals make normal movements such as raising their heads for balance.<sup>108</sup> Supporters of the HTSA also argue that the top decks of double-deck trailers can collapse while carrying horses, injuring the animals.<sup>109</sup> Additionally, these trailers have loading ramps with steep inclines, which can injure horses when they are moving up or down the ramps.<sup>110</sup>

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<sup>100</sup> H.R. 305, 111th Cong. § 2 (Jan. 8, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* "HR305"; *select* Text of Legislation (last accessed Mar. 13, 2010)).

<sup>101</sup> Humane Socy. of the U.S., *Brutality of Horse Slaughter Exposed*, [http://www.humanesociety.org/news/news/2009/02/brutality\\_horse\\_slaughter\\_exposed\\_020609.html](http://www.humanesociety.org/news/news/2009/02/brutality_horse_slaughter_exposed_020609.html) (Feb. 6, 2009) (last accessed Mar. 13, 2010).

<sup>102</sup> 66 Fed. Reg. 63588, 63594 (Dec. 7, 2001) (codified at 9 C.F.R. § 88 (2009)).

<sup>103</sup> 9 C.F.R. § 88.3(b) (2009).

<sup>104</sup> See e.g. Animal Welfare Inst., *Horse Transportation Safety*, <http://www.awionline.org/ht/d/sp/i/11224/pid/11224> (last accessed Feb. 18, 2010); Humane Socy. of the U.S., *Stop Inhumane Horse Transport*, <https://secure.humanesociety.org/site/Advocacy?cmd=display&page=UserAction&id=1926> (last accessed Mar. 13, 2010).

<sup>105</sup> Am. Veterinary Med. Assn., *AVMA Policy, Humane Transport of Equines*, [http://www.avma.org/issues/policy/animal\\_welfare/equine\\_transport.asp](http://www.avma.org/issues/policy/animal_welfare/equine_transport.asp) (last accessed Feb. 18, 2010).

<sup>106</sup> 66 Fed. Reg. at 63594.

<sup>107</sup> Animal Welfare Inst., *Horse Transportation Safety*, *supra* n. 104.

<sup>108</sup> Equine Protection Network, *Double Deck Trailer Facts*, <http://equineprotectionnetwork.com/legislation/ILTransportBill.html> (last accessed Mar. 13, 2010).

<sup>109</sup> Humane Socy. of the U.S., *Stop Inhumane Horse Transport*, *supra* n. 104.

<sup>110</sup> 66 Fed. Reg. at 63594.

Supporters of the bill include the AVMA,<sup>111</sup> the Animal Welfare Institute,<sup>112</sup> and HSUS.<sup>113</sup> Perhaps surprisingly, the Equine Protection Network (EPN), a horse advocacy group, opposes H.R. 305 because it considers the criminal penalties to be lacking.<sup>114</sup> The EPN argues that the lack of large criminal penalties renders the legislation unenforceable and predicts that it will therefore be ineffective.<sup>115</sup>

In January 2009, the House of Representatives referred the HTSA to the Subcommittee on Highways and Transit of the Transportation and Infrastructure Committee, where it remains without action.<sup>116</sup>

## 2. *Prevention of Equine Cruelty Act*

Changes in state law caused the last equine slaughterhouses on United States soil to be shuttered in 2007,<sup>117</sup> but federal law does not ban the shipment of U.S. horses to Canada and Mexico to be slaughtered for human consumption.<sup>118</sup> In 2008, more than 98,000 horses were sent across U.S. borders to be killed in foreign slaughterhouses.<sup>119</sup> Initial counts for the first nine months of 2009 place the number of horses sent at 62,724.<sup>120</sup> In response to these numbers, Representatives John Conyers (D-Mich.) and Dan Burton (R-Ind.) and Senators Mary Landrieu (D-La.) and John Ensign (R-Nev.) introduced the Prevention of Equine Cruelty Act of 2009 (PECA) (H.R. 503/Sen. 727).<sup>121</sup> PECA would make it a crime to possess, ship, transport, purchase, sell, deliver, or receive a horse or horse carcass with the in-

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<sup>111</sup> Am. Veterinary Med. Assn., *H.R. 305 The Horse Transportation Safety Act of 2009*, [http://www.avma.org/advocacy/federal/legislative/issue\\_briefs/horse\\_transportation\\_safety\\_act.asp](http://www.avma.org/advocacy/federal/legislative/issue_briefs/horse_transportation_safety_act.asp) (last accessed Mar. 13, 2010).

<sup>112</sup> Animal Welfare Inst., *Compassion Index, Congress Considers Bill to Ban Double-Deck Trailers for Horses*, <http://capwiz.com/compassionindex/issues/alert/?alertid=11562931> (last accessed Mar. 13, 2010).

<sup>113</sup> Humane Socy. of the U.S., *Stop Inhumane Horse Transport*, *supra* n. 104.

<sup>114</sup> Equine Protection Network, *Double Deck Trailer Legislation Introduced in Congress*, <http://equineprotectionnetwork.com> (last accessed Mar. 13, 2010).

<sup>115</sup> *Id.*

<sup>116</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR305"; *select* All Congressional Actions (last accessed Mar. 13, 2010).

<sup>117</sup> Humane Socy. of the U.S., *Brutality of Horse Slaughter Exposed*, *supra* n. 101.

<sup>118</sup> Katie Zezima, *Surge in Abandoned Horses Renews Debate Over Slaughterhouses*, 158 N.Y. Times A16 (Apr. 7, 2009) (available at <http://www.nytimes.com/2009/04/07/us/07horses.html>) (last accessed Mar. 13, 2010).

<sup>119</sup> *Id.*

<sup>120</sup> Animal Welfare Inst., *US Horse Slaughter Statistics*, <http://www.awionline.org/ht/d/sp/i/14227/pid/14227> (last updated Sept. 21, 2009) (last accessed Mar. 13, 2010).

<sup>121</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR503"; *select* CRS Summary (last accessed Mar. 13, 2010); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "S727"; *select* CRS Summary (last accessed Mar. 13, 2010).

tent that it be used for human consumption.<sup>122</sup> This would effectively outlaw the current practice of transporting horses to Canada or Mexico for slaughter. Violation of PECA would be punishable with a prison term, a fine, or both.<sup>123</sup>

Those opposed to anti-slaughter legislation argue that such a law would do more harm than good for the welfare of horses. Without slaughter operations, opponents argue, the population of unwanted horses would drastically increase.<sup>124</sup> They point to the existing high numbers of unwanted horses and the limited capacity of shelters to take them.<sup>125</sup> Opponents also contend that slaughter procedures do not inflict suffering on horses because they utilize humane euthanasia.<sup>126</sup> The American Quarter Horse Association voiced concerns about possible unintended consequences of PECA on horse owners, arguing that the bill would unnecessarily restrict commerce in lean economic times and create difficulties for horse owners attempting to transport horses for reasons other than slaughter for human consumption.<sup>127</sup>

Proponents of the legislation counter that PECA is necessary because the slaughter process is inhumane. They argue that the slaughter industry preys on “healthy, marketable” horses,<sup>128</sup> and that a large number of horses sent to slaughter were stolen, not unwanted or abandoned as opponents claim.<sup>129</sup> Proponents also point to a variety of sources, including veterinary sources, that indicate that slaughterhouses use methods to kill horses other than humane euthanasia, including stabbing the horse multiple times in the spinal cord until the animal is paralyzed.<sup>130</sup> PECA supporters argue that these methods are inhumane and often do not work properly, resulting in dismemberment while the animal is still alive and conscious.<sup>131</sup> Proponents also point to the stress and injury the horses often suffer during travel to the slaughterhouse as evidence of the necessity of PECA. Horses frequently have to travel long distances without food, water, or rest,<sup>132</sup>

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<sup>122</sup> H.R. 503, 111th Cong., § 2 (Jan. 14, 2009) (available at <http://thomas.loc.gov>; *select* Bill Number, *search* “HR503”; *select* Text of Legislation (last accessed Mar. 13, 2010)).

<sup>123</sup> *Id.*

<sup>124</sup> H.R. Subcomm. on Crime, Terrorism, & Homeland Sec. of the Jud. Comm., *Prevention of Equine Cruelty Act of 2008, and the Animal Cruelty Statistics Act of 2008: Hearings on H.R. 6598 and H.R. 6597*, 110th Cong. 56, 58 (Jul. 31, 2008) (available at <http://judiciary.house.gov/hearings/printers/110th/43830.pdf> (last accessed Mar. 21, 2010)).

<sup>125</sup> *Id.* at 113, 117, 118.

<sup>126</sup> *Id.* at 56.

<sup>127</sup> *Id.* at 114–15.

<sup>128</sup> *Id.* at 69.

<sup>129</sup> *Id.* at 2.

<sup>130</sup> H.R. Subcomm. on Crime, Terrorism, & Homeland Sec. of the Jud. Comm., *supra* n. 124, at 65, 67–68.

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

<sup>132</sup> *Id.* at 66, 96.

and they often arrive badly injured.<sup>133</sup> Supporters of the legislation argue that PECA solves these problems by criminalizing the sale and transport of horses to be slaughtered for human consumption.<sup>134</sup>

Various iterations of horse-slaughter-prevention bills have been introduced in Congress during the past eight years,<sup>135</sup> including a 2008 bill nearly identical to PECA.<sup>136</sup> Despite bipartisan support, however, none have become law. Both the House and Senate versions of PECA have been referred to committee,<sup>137</sup> but no further action has been taken on either bill.

### 3. *Wild Horses and Burros*

In 1971, Congress passed the Wild Free-Roaming Horse and Burro Act<sup>138</sup> (1971 Act) to protect and manage wild horses and burros on public lands, declaring that these animals are “living symbols of the historic and pioneer spirit of the West.”<sup>139</sup> Congress found that wild horses and burros were quickly disappearing and adopted the 1971 Act to protect the animals from capture, harassment, and death.<sup>140</sup> The Act criminalized the commercial sale and slaughter of wild horses and burros, a protection that remained in place for more than thirty years until it was eliminated by a midnight rider added to the 2005 Omnibus Appropriations Bill by former Senator Conrad Burns (R-Mont.).<sup>141</sup> Now the U.S. Bureau of Land Management (BLM), the agency charged with managing wild horses and burros, is compelled to sell or destroy animals older than ten years of age and those for which private adoption has been unsuccessfully attempted at least three times.<sup>142</sup> Accord-

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<sup>133</sup> Humane Socy. of the U.S., *A Grisly End for America's Horses*, [http://www.humane.society.org/issues/horse\\_slaughter/facts/grisly\\_end\\_for\\_horses.html](http://www.humane.society.org/issues/horse_slaughter/facts/grisly_end_for_horses.html) (Sept. 25, 2009) (last accessed Mar. 26, 2010).

<sup>134</sup> H.R. Subcomm. on Crime, Terrorism, & Homeland Sec. of the Jud. Comm., *supra* n. 124, at 85.

<sup>135</sup> *Id.* at 86–89.

<sup>136</sup> Lib. Cong., *THOMAS, Advanced Bill Summary and Status Search for the 110th Congress*, <http://thomas.loc.gov/bss/d110query.html>; search “Prevention of Equine Cruelty”; select Text of Legislation (last accessed Mar. 13, 2010).

<sup>137</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; select Bill Number, search “HR503”; select All Congressional Actions (last accessed Mar. 13, 2010); Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; select Bill Number, search “S727”; select All Congressional Actions (last accessed Mar. 13, 2010).

<sup>138</sup> 16 U.S.C. §§ 1331–1340 (2006).

<sup>139</sup> *Id.* at § 1331.

<sup>140</sup> *Id.*

<sup>141</sup> Humane Socy. of the U.S., *U.S. Reps. Rahall, Grijalva Introduce Bill to Stop Slaughter of America's Wild Horses*, [http://www.humanesociety.org/news/press\\_releases/2009/02/wild\\_horse\\_and\\_burro\\_act\\_introduced\\_021209.html](http://www.humanesociety.org/news/press_releases/2009/02/wild_horse_and_burro_act_introduced_021209.html) (Feb. 12, 2009) (last accessed Mar. 13, 2010) [hereinafter Humane Socy., *Rahall and Grijalva*].

<sup>142</sup> 16 U.S.C. § 1333(e)(1) (2006).

ing to the Animal Welfare Institute, this policy has only one possible outcome: slaughter.<sup>143</sup>

In an effort to restore the federal protections for wild horses and burros, Representatives Nick Rahall (D-W. Va.) and Raul Grijalva (D-Ariz.) introduced the Restore Our American Mustangs (ROAM) Act (H.R. 1018) in February 2009.<sup>144</sup> The ROAM Act amends the 1971 Act to prohibit the commercial sale and slaughter of wild horses and the killing of healthy wild horses and burros.<sup>145</sup> It also mandates that the amount of rangeland available to wild horses and burros never be less than the acreage available when the 1971 Act was enacted.<sup>146</sup> In addition, the ROAM Act establishes sanctuaries for wild horses and burros on public lands and mandates use of enhanced contraception techniques as a method of animal population control.<sup>147</sup> The bill also includes a requirement that BLM manage public lands where wild horses and burros reside in a manner that will protect ecosystem health and biological diversity.<sup>148</sup>

Proponents argue that the ROAM Act is urgently needed because BLM is neither meeting its management responsibilities when it comes to wild horses and burros nor upholding the spirit of the 1971 Act.<sup>149</sup> As evidence, supporters point to BLM's announcement that it may have to kill as many as 30,000 healthy wild horses and burros because of a shortage of funds and facility space.<sup>150</sup> The ROAM Act's advocates argue that it will provide BLM with better management tools so that the agency can improve its performance and provide more transparent, scientific, and humane management of wild horses and burros.<sup>151</sup>

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<sup>143</sup> Animal Welfare Inst., *Wild Horse and Burro Protection*, <http://www.awionline.org/ht/d/sp/i/11223/pid/11223> (last accessed Mar. 13, 2010).

<sup>144</sup> H.R. Comm. on Nat. Resources, *America's Wild Horses Will Roam Free, Under New Legislation*, [http://resourcescommittee.house.gov/index.php?option=com\\_content&task=view&id=504&Itemid=1](http://resourcescommittee.house.gov/index.php?option=com_content&task=view&id=504&Itemid=1) (Feb. 12, 2009) (last accessed Mar. 13, 2010).

<sup>145</sup> H.R. 1018, 111th Cong. § 5 (Jul. 20, 2009) (available at <http://thomas.loc.gov/select> Bill Number, search "HR1018"; select Text of Legislation, select 4. Restore our American Mustangs Act (Referred to Senate Committee after being Received from House) [PDF] (last accessed Mar. 13, 2010)); H.R. Rpt. 111-177, 18-19 (June 23, 2009) (available at <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt177/pdf/CRPT-111hrpt177.pdf> (last accessed Mar. 13, 2010)).

<sup>146</sup> H.R. 1018, 111th Cong. § 5 (Jul. 20, 2009); H.R. Rpt. 111-177, 18-19.

<sup>147</sup> H.R. 1018, 111th Cong. § 5 (Jul. 20, 2009); H.R. Rpt. 111-177, 18-19.

<sup>148</sup> H.R. 1018, 111th Cong. § 5 (Jul. 20, 2009); H.R. Rpt. 111-177, 18-19.

<sup>149</sup> H.R. Rpt. 111-117 at 7.

<sup>150</sup> H.R. Subcomm. on Natl. Parks, Forests, & Public Lands of the Comm. on Nat. Resources, *Statement of U.S. Rep. Nick J. Rahall, II, Chairman, Committee on Natural Resources on The Restore Our American Mustangs Act (H.R. 1018)*, [http://resourcescommittee.house.gov/images/Documents/20090303/nfppl/leg/statement\\_rahall.pdf](http://resourcescommittee.house.gov/images/Documents/20090303/nfppl/leg/statement_rahall.pdf) (Mar. 3, 2009) (last accessed Mar. 21, 2010); cf. Bureau of Land Management, *Recommendations of BLM's Wild Horse and Burro Advisory Board*, [http://www.blm.gov/wo/st/en/info/newsroom/2008/november/NR\\_11\\_19\\_2008.html](http://www.blm.gov/wo/st/en/info/newsroom/2008/november/NR_11_19_2008.html) (Oct. 20, 2009) (last accessed Apr. 1, 2010).

<sup>151</sup> *Id.*



Proponents also argue that making humane management of wild horses and burros a BLM priority would reduce the need for expensive measures BLM currently uses, such as helicopter roundups<sup>152</sup> and long-term housing of tens of thousands of animals in holding pens.<sup>153</sup> They contend that BLM's current refusal to implement these cheaper, more humane alternative management methods constitutes a misuse of tax dollars.<sup>154</sup> BLM counters that management techniques such as helicopter roundups and long-term holding are humane and necessary to maintain optimal numbers of wild horses and burros based on the carrying capacity of the rangeland and other resource uses of the public rangeland.<sup>155</sup> They argue that wild horse and burro populations are thriving, herds are capable of doubling in size about every four years, and, therefore, without removal of thousands of animals each year, populations will exceed sustainable levels.<sup>156</sup> BLM has refrained from taking a position on the ROAM Act.<sup>157</sup> However, in congressional hearings on the ROAM Act, BLM personnel expressed concern about certain provisions of the bill that limit the agency's ability to remove and sell animals, particularly in light of declining adoption rates, growing costs, and burgeoning animal populations.<sup>158</sup> The Western Association of Fish and Wildlife Services expressed similar concerns about the ROAM Act, including concern that it will not allow BLM to properly control wild horse populations, which will result in adverse effects on habitat for other wildlife and other uses of public lands.<sup>159</sup>

The House of Representatives passed the ROAM Act after amendment in July 2009.<sup>160</sup> The bill was received in the Senate in July 2009

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<sup>152</sup> Humane Socy., *Rahall and Grijalva*, *supra* n. 141.

<sup>153</sup> Humane Socy. of the U.S., *The HSUS Hails U.S. House Vote to Save Wild Horses, Millions of Tax Dollars*, [http://www.humanesociety.org/news/press\\_releases/2009/07/hsus\\_applauds\\_house\\_vote\\_to\\_save\\_wild\\_horses\\_071709.html](http://www.humanesociety.org/news/press_releases/2009/07/hsus_applauds_house_vote_to_save_wild_horses_071709.html) (Jul. 17, 2009) (last accessed Mar. 13, 2010).

<sup>154</sup> *Id.*

<sup>155</sup> U.S. Dept. of the Int. Bureau of Land Mgt., Natl. Wild Horse & Burro Program, *Myths and Facts*, [http://www.blm.gov/wo/st/en/prog/wild\\_horse\\_and\\_burro/national/about/myths.html](http://www.blm.gov/wo/st/en/prog/wild_horse_and_burro/national/about/myths.html) (last accessed Mar. 13, 2010).

<sup>156</sup> H.R. Subcomm. on Natl. Parks, Forests, & Public Lands of the Comm. on Nat. Resources, *Testimony of Ed Roberson, Assistant Director, Renewable Resources & Planning, Bureau of Land Management, U.S. Department of the Interior on H.R. 1018*, 111th Cong. 4–6 (Mar. 3, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090303/npfpl/leg/testimony\\_roberson.pdf](http://resourcescommittee.house.gov/images/Documents/20090303/npfpl/leg/testimony_roberson.pdf) (last accessed Mar. 13, 2010)).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> H.R. Subcomm. on Natl. Parks, Forests, & Public Lands of the Comm. on Nat. Resources, *Statement of Larry D. Voyles, Director, Arizona Game and Fish Department, Submitted on Behalf of the Western Association of Fish and Wildlife Agencies on H.R. 1018*, 111th Cong. 4–5 (Mar. 3, 2009) (available at [http://resourcescommittee.house.gov/images/Documents/20090303/npfpl/leg/testimony\\_voyles.pdf](http://resourcescommittee.house.gov/images/Documents/20090303/npfpl/leg/testimony_voyles.pdf) (last accessed Mar. 13, 2010)).

<sup>160</sup> Lib. Cong., *THOMAS, Search Bill Summary and Status for the 111th Congress*, <http://thomas.loc.gov>; *select* Bill Number, *search* "HR1018"; *select* All Congressional Actions with Amendments (last accessed Mar. 13, 2010).

and was referred to the Committee on Energy and Natural Resources, where it remains.<sup>161</sup>

In October 2009, Department of the Interior Secretary Ken Salazar proposed a new management program for wild horses and burros that would create seven new preserves, expand the utilization of contraceptives, and attempt to increase adoption numbers.<sup>162</sup> While some animal advocacy groups have sharply criticized the new management program,<sup>163</sup> other groups, including HSUS<sup>164</sup> and some sponsors of the ROAM Act,<sup>165</sup> cautiously support it.

## II. STATE LEGISLATION

This Part discusses the text, status, and implications of select pieces of state legislation considered in 2009. Generally, state bills that are not passed within a given legislative session expire and must be reintroduced in a subsequent session if they are to be reconsidered.<sup>166</sup> The current legislatures ultimately decide which issues to revisit.

### A. Horse Slaughter

In 2007, courts upheld laws in Texas and Illinois that led to the closure of the last three horse-slaughter facilities in the United States.<sup>167</sup> Appeals of the Texas and Illinois cases were both denied review by the United States Supreme Court.<sup>168</sup> Some opponents of horse slaughter hailed this as a victory, seeing it as a step toward ending

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

<sup>162</sup> Jim Robbins, *7 Preserves Envisioned to Manage Wild Horses*, 159 N.Y. Times A18 (Oct. 8, 2009) (available at <http://www.nytimes.com/2009/10/08/us/08horses.html> (last accessed Mar. 21, 2010)).

<sup>163</sup> Lyndsey Layton & Juliet Eilperin, *Salazar Presents Ambitious Plan to Manage Wild Horses*, <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/07/AR2009100703237.html> (Oct. 8, 2009) (last accessed Mar. 13, 2010).

<sup>164</sup> Humane Socy. of the U.S., *The HSUS Lauds BLM Plan to Reform Wild Horse Management Program*, [http://www.humanesociety.org/news/press\\_releases/2009/10/blm\\_wild\\_horse\\_plan\\_100709.html](http://www.humanesociety.org/news/press_releases/2009/10/blm_wild_horse_plan_100709.html) (Oct. 7, 2009) (last accessed Mar. 13, 2010).

<sup>165</sup> Matthew Daly, *New Interior Plan Would Spare Wild Mustangs*, [http://articles.sfgate.com/2009-10-08/bay-area/17183200\\_1\\_horses-costs-animals](http://articles.sfgate.com/2009-10-08/bay-area/17183200_1_horses-costs-animals) (Oct. 8, 2009) (last accessed Apr. 1, 2010).

<sup>166</sup> See e.g. N.J. Legis., *Our Legislature, Legislative Sessions*, <http://www.njleg.state.nj.us/legislativepub/our.asp> (last accessed Mar. 13, 2010) (stating that bills not passed in a particular legislative session expire); but see Office of the Senate Clerk, *Massachusetts Legislative History* 1.1.1, <http://www.mass.gov/legis/legishistory.htm> (last accessed Mar. 13, 2010) (describing a measure that allows for bills to be carried over into a biennial session).

<sup>167</sup> Catrin Einhorn, *Horses Spared in U.S. Face Death Across the Border*, 157 N.Y. Times A10 (Jan. 11, 2008) (available at <http://www.nytimes.com/2008/01/11/us/11horse.html>) (last accessed Mar. 13, 2010); *Cavel Intl., Inc. v. Madigan*, 500 F.3d 551, 559 (7th Cir. 2007), cert. denied, 128 S. Ct. 2950 (2008); *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326, 328–29 (5th Cir. 2007), cert. denied, 550 U.S. 957 (2007).

<sup>168</sup> *Empacadora de Carnes de Fresnillo, S.A., de C.V.*, 550 U.S. at 957; *Cavel Intl., Inc.*, 128 S. Ct. at 2950.

horse slaughter all across North America.<sup>169</sup> Indeed, the estimated number of American horses slaughtered in the United States, Mexico, and Canada went from 138,000 in 2006 to 105,000 in 2007.<sup>170</sup>

The virtual end of horse slaughter in the United States, however, carried unexpected consequences. Tens of thousands of horses, once slaughtered domestically, now face export to Canada and Mexico, which for many horses means hundreds of additional miles of transport.<sup>171</sup> According to Timothy Cordes, a senior veterinarian with the United States Department of Agriculture (USDA), the horses are crowded into trailers, with no access to food or water, and have difficulty keeping their balance.<sup>172</sup> There is also concern for the methods of slaughter used once the horses arrive in Canada and Mexico.<sup>173</sup> The United States slaughterhouses drove steel pins into the horses' brains, killing them quickly.<sup>174</sup> By contrast, workers in Mexico disable horses by severing their spinal cords with knives, according to Temple Grandin, an animal science professor at Colorado State University.<sup>175</sup> She referred to the closures of the United States slaughterhouses as "well-intentioned but [with] very bad unintended consequences."<sup>176</sup> This issue has sparked considerable controversy—so much so that the American Horse Council, a major lobbyist on horse-related issues, has declined to take an official position due to conflicts within the organization.<sup>177</sup>

The bulk of horse-slaughter-related state legislation in 2009 was associated with the proposed federal legislation. Thirteen states proposed bills urging Congress to support United States horse processing facilities and to oppose the Prevention of Equine Cruelty Act (PECA).<sup>178</sup> The House bill from Missouri and the bills from Minnesota, South Carolina, Kansas, Arizona, Georgia, Tennessee, Idaho, Utah,

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<sup>169</sup> Einhorn, *supra* n. 167.

<sup>170</sup> *Id.* at ¶ 12.

<sup>171</sup> *Id.* at ¶ 4.

<sup>172</sup> *Id.* at ¶ 13.

<sup>173</sup> *Id.* at ¶ 14.

<sup>174</sup> *Id.* at ¶ 15.

<sup>175</sup> Einhorn, *supra* n. 167 at ¶ 15.

<sup>176</sup> *Id.* at ¶ 16.

<sup>177</sup> Am. Horse Council, *Prevention of Equine Cruelty Act of 2009*, <http://www.horse-council.org/legislation/PrevofEqCrueltyAct111.php> (last accessed Mar. 13, 2010).

<sup>178</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶ 9 (Jan. 28, 2009); Mo. Sen. Con. Res. 8, 95th Gen. Assembly, 1st Reg. Sess. (Jan. 15, 2009); Minn. Sen. File 133, 86th Leg. Sess. §§ 2.3–2.5 (Jan. 15, 2009); Minn. H. File 840, 86th Leg. Sess. §§ 2.3–2.5 (Feb. 16, 2009); S.C. Sen. Con. Res. 480, 118th Sess. ¶¶ 9–10 (Feb. 25, 2009); Kan. H. Con. Res. 5004, 2009 Sess. 1:38–41 (Jan. 22, 2009); Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶ 9 (Jan. 29 2009); Ga. H. Res. 583, 150th Gen. Assembly, 2009–2010 ¶ 9 (Mar. 10, 2009); Tenn. H. Jt. Res. 245, 106th Gen. Assembly, 2009 Reg. Sess. ¶ 9 (Mar. 25, 2009); Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:29–32 (Mar. 10, 2009); Utah H. Jt. Res. 7, 2009 Gen. Sess. at 2:40–42 (Jan. 26, 2009); Wyo. H. Jt. Res. 8, 2009 Gen. Sess. at 1:1–3 (Jan. 19, 2009); Ark. H. Con. Res. 1004, 87th Gen. Assembly, Reg. Sess. (Jan. 22, 2009); Ill. H. Res. 160, 96th Gen. Assembly (Mar. 5, 2009); Iowa Sen. Res. 16, 83d Gen. Assembly (Mar. 9, 2009).

and Wyoming all use virtually identical wording.<sup>179</sup> The bills begin by stating that “the processing of horses has become a controversial and emotional issue and has resulted in the closing of all horse processing facilities throughout the United States.”<sup>180</sup> The bills claim that the loss of secondary markets has significantly decreased the market value of horses and that the prohibitions on processing have resulted in an increase in abandoned and neglected horses.<sup>181</sup> They further claim that the domestic horse surplus, estimated at 100,000, compounding annually,<sup>182</sup> is overwhelming welfare agencies.<sup>183</sup> The bills then assert that these issues are best dealt with by regulation and inspection, not prohibition, and that state agricultural and rural leaders recognize the necessity of a state’s ability to direct the processing and transport of horses.<sup>184</sup> Each bill concludes by urging Congress to oppose federal legislation that interferes with states’ ability to direct the transport or processing of horses.<sup>185</sup>

<sup>179</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess.; Minn. Sen. File 133, 86th Leg. Sess.; Minn. H. File 840, 86th Leg. Sess.; S.C. Sen. Con. Res. 480, 118th Sess.; Kan. H. Con. Res. 5004, 2009 Sess.; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess.; Ga. H. Res. 583; Tenn. H. Jt. Res. 245; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess.; Utah H. Jt. Res. 7, 2009 Gen. Sess.; Wyo. H. Jt. Res. 8, 2009 Gen. Sess.

<sup>180</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶ 1; Minn. Sen. File 133, 86th Leg. Sess. at §§ 1.4–1.5; Minn. H. File 840, 86th Leg. Sess. §§ 1.4–1.5; S.C. Sen. Con. Res. 480, 118th Sess. ¶ 1; Kan. H. Con. Res. 5004, 2009 Sess. at 1:14–16; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶ 1; Ga. H. Res. 583 ¶ 1; Tenn. H. Jt. Res. 245 ¶ 1; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:9–10; Utah H. Jt. Res. 7, 2009 Gen. Sess. at 1:19–20; Wyo. H. Jt. Res. 8, 2009 Gen. Sess. at 1:5–8.

<sup>181</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶¶ 3–4; Minn. Sen. File 133, 86th Leg. Sess. at §§ 1.9–1.14; Minn. H. File 840, 86th Leg. Sess. §§ 1.9–1.14; S.C. Sen. Con. Res. 480, 118th Sess. ¶¶ 3–4; Kan. H. Con. Res. 5004, 2009 Sess. at 1:21–26; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶¶ 3–4; Ga. H. Res. 583 ¶¶ 3–4; Tenn. H. Jt. Res. 245 ¶¶ 3–4; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:14–19; Utah H. Jt. Res. 7, 2009 Gen. Sess. at 1:25–30; Wyo. H. Jt. Res. 8, 2009 Gen. Sess. at 2:1–9.

<sup>182</sup> The Minnesota bills make no mention of a compounding or increasing supply of horses.

<sup>183</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶¶ 5–6; Minn. Sen. File 133, 86th Leg. Sess. at §§ 1.15–1.18; Minn. H. File 840, 86th Leg. Sess. §§ 1.15–1.18; S.C. Sen. Con. Res. 480, 118th Sess. ¶¶ 5–6; Kan. H. Con. Res. 5004, 2009 Sess. at 1:27–31; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶¶ 5–6; Ga. H. Res. 583 ¶¶ 5–6; Tenn. H. Jt. Res. 245 ¶¶ 5–6; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:20–23; Utah H. Jt. Res. 7, 2009 Gen. Sess. at 2:31–34; Wyo. H. Jt. Res. 8, 2009 Gen. Sess. at 2:11–17.

<sup>184</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶¶ 7–8; Minn. Sen. File 133, 86th Leg. Sess. §§ 1.19–2.2; Minn. H. File 840, 86th Leg. Sess. §§ 1.19–2.2; S.C. Sen. Con. Res. 480, 118th Sess. ¶¶ 7–8; Kan. H. Con. Res. 5004, 2009 Sess. at 1:32–37; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶¶ 7–8; Ga. H. Res. 583 ¶¶ 7–8; Tenn. H. Jt. Res. 245 ¶¶ 7–8; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:24–28; Utah H. Jt. Res. 7, 2009 Gen. Sess. at 2:35–39; Wyo. H. Jt. Res. 8, 2009 Gen. Sess. at 2:19–22.

<sup>185</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess. ¶ 9; Minn. Sen. File 133, 86th Leg. Sess. §§ 2.3–2.5; Minn. H. File 840, 86th Leg. Sess. §§ 2.3–2.5; S.C. Sen. Con. Res. 480, 118th Sess. ¶ 9; Kan. H. Con. Res. 5004, 2009 Sess. at 1:38–41; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess. ¶ 9; Ga. H. Res. 583 ¶ 9; Tenn. H. Jt. Res. 245 ¶ 9;

The Missouri bill passed the House, but no further action was taken.<sup>186</sup> The Minnesota bill passed the Senate<sup>187</sup> and the House version of the bill was most recently referred to the Agriculture, Rural Economies, and Veterans Affairs Committee.<sup>188</sup> The bill from South Carolina was most recently referred to the Committee on Agriculture and Natural Resources.<sup>189</sup> In Kansas, the Agriculture and Natural Resources Committee recommended the bill be adopted as amended.<sup>190</sup> The Arizona bill died in committee.<sup>191</sup> The Georgia bill passed the House.<sup>192</sup> The bill from Tennessee was most recently assigned to the Senate Finance, Ways and Means Committee.<sup>193</sup> The Idaho bill passed the House, but never proceeded beyond the Senate Agricultural Affairs Committee.<sup>194</sup> The bill from Utah passed both houses and was sent to the Lieutenant Governor's office for filing on February 17, 2009.<sup>195</sup> In Wyoming, the bill passed both houses and was signed by the governor on March 3, 2009.<sup>196</sup>

The four other bills urging Congress to oppose federal horse-processing legislation came from Missouri,<sup>197</sup> Arkansas,<sup>198</sup> Illinois,<sup>199</sup>

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Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess. at 1:29–32; Utah H. Jt. Res. 7, 2009 Gen. Sess. at 2:40–42; Wyo. H. Jt. Res. 8, 2009 Gen. Sess. § 1.

<sup>186</sup> Mo. H. Rep., *HCR 19*, <http://house.mo.gov/content.aspx?info=/Bills091/bills/hcr19.htm> (last updated Nov. 17, 2009) (last accessed Mar. 13, 2010).

<sup>187</sup> Minn. Sen. J., 86th Leg. Sess. 5769 (May 15, 2009); Minn. St. Legis., *SF133 Status in House for Legislative Session 86*, <http://www.senate.leg.state.mn.us/bills/billinf.php?ls=86;select> Status of Bill in the Senate (last updated Mar. 2, 2010) (last accessed Mar. 31, 2010).

<sup>188</sup> Minn. St. Legis., *HF840 Status in House for Legislative Session 86*, <http://www.leg.state.mn.us/leg/legis.asp;path> House of Representatives, *search* HF840, *select* Status of Bill in the House (last updated Mar. 2, 2010) (last accessed Mar. 31, 2010).

<sup>189</sup> S.C. Sen. J., 118th Sess. (Feb. 25, 2009); S.C. Legis. Online, *2009–2010 Bill 480: Horses*, [http://www.scstatehouse.gov/sess118\\_2009-2010/bills/480.htm](http://www.scstatehouse.gov/sess118_2009-2010/bills/480.htm) (last updated Nov. 23, 2009) (last accessed Mar. 13, 2010).

<sup>190</sup> Kan. H. J. 177 (Feb. 17, 2009); Kan. Legis., *Full History on Bill 5004*, <http://www.kslegislature.org/legsrv-billtrack;enter> bill number 5004, *select* Full History of the Bill (last accessed Mar. 13, 2010).

<sup>191</sup> Ariz. St. Legis., *Bill Status Overview–S.C.M 1001*, <http://www.azleg.gov/Bills.asp;select> Senate Memorials and Resolutions, *select* SCM1001 (last accessed Mar. 31, 2010).

<sup>192</sup> Ga. Gen. Assembly, *H.R. 583*, [http://www.legis.state.ga.us/legis/2009\\_10/sum/hr583.htm](http://www.legis.state.ga.us/legis/2009_10/sum/hr583.htm) (last accessed Mar. 13, 2010).

<sup>193</sup> Tenn. Gen. Assembly, *Bill Information for HJR0245*, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HJR0245> (last accessed Mar. 13, 2010).

<sup>194</sup> Idaho Legis., *House Joint Memorial 5*, <http://legislature.idaho.gov/legislation/2009/HJM005.htm> (last accessed Mar. 13, 2010).

<sup>195</sup> Utah St. Legis., *H.J.R. 7 Bill Status*, <http://www.le.state.ut.us/~2009/status/hbill-sta/HJR007.htm> (last accessed Mar. 13, 2010).

<sup>196</sup> Wyo. St. Legis., *H.J. No. 0008 Equine Resources*, <http://legisweb.state.wy.us/2009/Digest/HJ0008.htm> (last accessed Mar. 13, 2010).

<sup>197</sup> Mo. Sen. Con. Res. 8, 95th Gen. Assembly, 1st Reg. Sess.

<sup>198</sup> Ark. H. Con. Res. 1004, 87th Gen. Assembly, Reg. Sess. The Arkansas bill also urged the Arkansas Congressional Delegation to support horse-processing facilities. *Id.* at 2:20–22.

<sup>199</sup> Ill. H. Res. 160, 96th Gen. Assembly.

and Iowa.<sup>200</sup> These bills are substantially similar to those discussed above,<sup>201</sup> but also state that the additional horses (i.e., the alleged surplus) compete for adoption with the 32,000 wild horses currently being sheltered and fed at taxpayer expense.<sup>202</sup> The bills state that horses are the only type of animal whose transportation to processing is regulated.<sup>203</sup> Additionally, the Missouri, Arkansas, and Illinois bills state that equine protein is considered to be the best food for big cats and rare birds.<sup>204</sup> The Iowa bill was referred to the Rules and Administration Committee in March 2009, and no further action had been taken when the legislature adjourned on January 7, 2010.<sup>205</sup> The Illinois bill was most recently re-referred to the Rules Committee.<sup>206</sup> The Arkansas bill passed both houses and was ordered transmitted to the governor's office on April 3, 2009.<sup>207</sup>

Two similar bills came out of South Dakota and North Dakota. The South Dakota Legislature passed a bill urging Congress and the USDA to reinstate and fully fund an inspection program for horse euthanasia and horse slaughter, and to enact legislation authorizing domestic horse slaughter.<sup>208</sup> The North Dakota Legislature passed a bill urging Congress to "recognize the need for . . . inspection and regulation of horse processing facilities in the United States," to allow the transportation and processing of horses, and to allow the exportation of "safe and wholesome horse meat."<sup>209</sup>

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<sup>200</sup> Iowa Sen. Res. 16, 83d Gen. Assembly.

<sup>201</sup> Mo. H. Con. Res. 19, 95th Gen. Assembly, 1st Reg. Sess.; Minn. Sen. File 133, 86th Leg. Sess.; Minn. H. File 840, 86th Leg. Sess.; S.C. Sen. Con. Res. 480, 118th Sess.; Kan. H. Con. Res. 5004, 2009 Sess.; Ariz. Sen. Con. Meml. 1001, 49th Leg., 1st Reg. Sess.; Ga. H. Res. 583, 2009 Sess.; Tenn. H. Jt. Res. 245, 106th Gen. Assembly; Idaho H. Jt. Meml. 5, 60th Leg., 1st Reg. Sess.; Utah H. Jt. Res. 7, 2009 Gen. Sess.; Wyo. H. Jt. Res. 8, 2009 Gen. Sess.

<sup>202</sup> Mo. Sen. Con. Res. 8, 95th Gen. Assembly, 1st Reg. Sess. ¶ 2; Ark. H. Con. Res. 1004, 87th Gen. Assembly, Reg. Sess. at 1:31-34; Ill. H. Res. 160, 96th Gen. Assembly at 1:11-14; Iowa Sen. Res. 16, 83d Gen. Assembly §§ 1.13-1.16.

<sup>203</sup> Mo. Sen. Con. Res. 8, 95th Gen. Assembly, 1st Reg. Sess. ¶ 1; Ark. H. Con. Res. 1004, 87th Gen. Assembly, Reg. Sess. at 1:23-34; Ill. H. Res. 160, 96th Gen. Assembly at 1:4-5; Iowa Sen. Res. 16, 83d Gen. Assembly §§ 1.5-1.7.

<sup>204</sup> Mo. Sen. Con. Res. 8, 95th Gen. Assembly, 1st Reg. Sess. ¶ 4; Ark. H. Con. Res. 1004, 87th Gen. Assembly, Reg. Sess. at 2:5-9; Ill. H. Res. 160, 96th Gen. Assembly at 1:20-2:5.

<sup>205</sup> Iowa Leg., *Bill History for SR 16*, <http://www.legis.state.ia.us/index.html>; *path* Quick Find: Bills and Iowa Code, *search* SR16, *select* Current Bill History (last accessed Mar. 31, 2010).

<sup>206</sup> Ill. Gen. Assembly, *Bill Status of HR0160*, <http://www.ilga.gov/legislation/default.asp>; *path* House-Resolutions, *select* 0101-0200, *select* 0160 Urge Congress-Horse Processing (last accessed Mar. 31, 2010).

<sup>207</sup> Ark. St. Leg., *Bill Status History*, <http://www.arkleg.state.ar.us/assembly/2009/R/Pages/BillStatusHistory.aspx?measureno=HCR1004> (last accessed Mar. 13, 2010).

<sup>208</sup> S.D. Sen. Con. Res. 2, 84th Leg. Sess. ¶ 8 (Feb. 3, 2009).

<sup>209</sup> N.D. Legis., *Measure Actions*, <http://www.legis.nd.gov/assembly/61-2009/bill-actions/ba4021.html> (last accessed Mar. 13, 2010); N.D. Sen. Con. Res. 4021, 61st Leg. Assembly ¶ 6.

The Montana Legislature passed a bill that, among other things, authorizes investor-owned equine-slaughter or processing facilities and largely immunizes such facilities from court-ordered injunctions.<sup>210</sup> The bill became law without the governor's signature on May 4, 2009.<sup>211</sup> The new law provides that a court may not issue an injunction pursuant to specifically named statutes that would stop or delay the construction of equine-slaughter facilities.<sup>212</sup> Pursuant to the new law, a person who files an action against such a facility and does not prevail will be financially obligated to that facility for any losses resulting from a court-ordered injunction that halts operations.<sup>213</sup> The law also requires a surety bond to accompany any action filed in district court challenging the issue of a license, certificate, permit, or other approval for such a facility.<sup>214</sup> The amount of the bond will be set at either 20% of the estimated cost of building the facility or 20% of the operational costs of an existing facility.<sup>215</sup>

Opponents of horse slaughter refute claims that horse slaughter is a necessary means of sparing 100,000 horses annually from neglect and abandonment, claiming that so-called "kill buyers" often outbid horse rescue workers at auctions.<sup>216</sup> These opponents also claim that horses that would have been slaughtered do not compete for adoption with the wild horses housed by the U.S. Bureau of Land Management and that those wild horses are held by the BLM precisely because they are not adoptable.<sup>217</sup>

Rhode Island proposed a bill urging Congress to support the federal horse-slaughter legislation.<sup>218</sup> The bill, which passed the House<sup>219</sup> and should be automatically reintroduced in the next legislative session,<sup>220</sup> declares that horse slaughter is "not humane euthanasia and is in fact animal torture and cruelty."<sup>221</sup> The bill further asserts that the slaughter facilities are detrimental to communities due to issues such as odor, environmental violations, and encourage-

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<sup>210</sup> Mont. H. 418, 61st Leg. (Feb. 2, 2009); Mont. Legis., *Detailed Bill Information*, [http://laws.leg.mt.gov/laws09/law0203w\\$.startup](http://laws.leg.mt.gov/laws09/law0203w$.startup), search "HB 418" (last accessed Mar. 13, 2010).

<sup>211</sup> Mont. Legis., *Action Details*, [http://laws.leg.mt.gov/laws09/law0203w\\$.startup](http://laws.leg.mt.gov/laws09/law0203w$.startup), search "HB 418," select Chapter Number Assigned (last accessed Mar. 13, 2010).

<sup>212</sup> Mont. H. 418, 61st Leg. § 1(1).

<sup>213</sup> *Id.* at § 1(2).

<sup>214</sup> *Id.* at § 2(1)(a).

<sup>215</sup> *Id.*

<sup>216</sup> Humane Socy. of the U.S., *Horse Slaughter—Myths and Facts*, <http://www.humane.society.org/assets/pdfs/legislation/horse-slaughter-myths-and-facts.pdf> (last accessed Mar. 13, 2010).

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

<sup>218</sup> R.I. H. 6026, Jan. Sess. 2:3–5 (2009).

<sup>219</sup> R.I. Gen. Assembly, *2009 House Numerical 5900-6199 27*, <http://www.rilin.state.ri.us/BillStatus09/H5900-6199.pdf> (last accessed Mar. 13, 2010).

<sup>220</sup> R.I. H. 5529, Jan. Sess. § 24 (2009) (a bill will carry over to the next legislative session, unless it is defeated or a general election intervenes, in which case the bill would have to be reintroduced).

<sup>221</sup> R.I. H. 6026, Jan. Sess. at 1:7–8.

ment of horse theft.<sup>222</sup> In addition, the bill asserts that horse slaughter is a for-profit enterprise driven by foreign markets and is not a means of controlling populations; horses are not raised under United States Food & Drug Administration guidelines and are unfit for human consumption; and horses are culturally significant animals revered for their companionship.<sup>223</sup>

Legislators in Wisconsin and New Jersey proposed bills to outlaw the slaughtering and processing of horses for human consumption.<sup>224</sup> The Wisconsin bill, which was most recently referred to the Committee on Agriculture and Higher Education, amends existing law by re-wording the statute against processing horse meat where other meat products are sold and by adding a provision that prohibits the slaughter of horses for human consumption.<sup>225</sup> The New Jersey bill, which expired at the end of the 2009 session, would have prohibited the sale, barter, or offer for sale of horse meat meant for human consumption.<sup>226</sup> Legislators in Arkansas also proposed a bill that would have urged Arkansans to take responsibility for the humane treatment and care of their own horses, but it died in committee.<sup>227</sup>

Other bills ordered studies to examine the impact and feasibility of creating equine-processing facilities. These bills came out of North Dakota, South Dakota, and Nebraska.<sup>228</sup> The North Dakota bill, which was signed into law on April 24, 2009,<sup>229</sup> was the most complex. The first section of this bill established an ongoing appropriation financed through a \$5 assessment for each horse processed in the equine-processing facilities that will be built if the study finds them desirable.<sup>230</sup> Fifty-thousand dollars of this money will reimburse the state general fund for the “equine processing facility feasibility study,” and the remainder will be used to provide annual grants to facilities conducting equine research.<sup>231</sup> The second section directs the North Dakota Department of Commerce to conduct the feasibility study.<sup>232</sup>

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<sup>222</sup> *Id.* at 1:9–12.

<sup>223</sup> *Id.* at 1:13–2:2.

<sup>224</sup> N.J. Assembly 551, 213th Leg., 2008 Sess. § 1 (Jan. 8, 2008); Wis. Sen. 142, 2009–2010 Leg. § 3 (Mar. 31, 2009).

<sup>225</sup> Wis. Sen. 142, 2009–2010 Leg. § 2 (Mar. 31, 2009).

<sup>226</sup> N.J. Legis., *Our Legislature, Legislative Sessions*, <http://www.njleg.state.nj.us/legislativepub/our.asp> (last accessed Mar. 13, 2010); N.J. Assembly 551, 213th Leg., 2008 Sess. § 1 (Jan. 8, 2008).

<sup>227</sup> Ark. Sen. Con. Res. 11, 87th Gen. Assembly, Reg. Sess. 2:14–16 (Feb. 5, 2009); Ark. St. Legis., *Bill Information*, <http://www.arkleg.state.ar.us/assembly/2009/R/Pages/BillInformation.aspx?measureno=SCR11> (last accessed Mar. 13, 2010).

<sup>228</sup> N.D. H. 1496, 61st Leg., Reg. Sess. § 2(1) (Jan. 19, 2009); S.D. Sen. 114, 2009 Leg. Assembly, 84th Sess. § 1 (Jan. 28, 2009); Neb. Leg. Res. 229, 101st Leg., 1st Sess. § 1 (May 18, 2009).

<sup>229</sup> N.D., *Measure Actions*, <http://www.legis.nd.gov/assembly/61-2009/bill-actions/ba1496.html> (last accessed Mar. 13, 2010).

<sup>230</sup> N.D. H. 1496, 61st Leg., Reg. Sess. § 1(1).

<sup>231</sup> *Id.* at § 1(2).

<sup>232</sup> *Id.* at § 2(1).



The study is to begin with a review of federal laws, regulations, policies, and guidelines, as well as the potential for amendments and modifications, to establish the legality of an equine-processing facility.<sup>233</sup> If legality is established, the study will proceed to address the potential costs and options for constructing a new facility or converting an existing structure, and to determine the nature of the domestic and international markets for equine products as well as the possibilities for funding the project.<sup>234</sup>

The South Dakota bill would have appropriated \$100,000 for a study to determine the “feasibility, viability, and desirability of establishing and operating an equine processing facility.”<sup>235</sup> The study was to address the socioeconomic impacts of establishing and maintaining such a facility.<sup>236</sup> The last action on this bill occurred on February 5, 2009, when the appropriations were deferred, and the legislature’s final legislative day was March 30, 2009.<sup>237</sup> Nebraska proposed a similar bill, which died in committee.<sup>238</sup>

Two other horse-slaughter-related bills came out of Tennessee in 2009.<sup>239</sup> House Bill 1361 would eliminate the labeling requirements of horse meat sold in the state.<sup>240</sup> House Bill 1428 would encourage establishing equine processing and slaughter facilities in the state, and would create a system for licensing such facilities.<sup>241</sup> Both bills were deferred until the 2010 legislative session.<sup>242</sup>

### B. Aerial Hunting of Feral Hogs

The various issues surrounding aerial hunting techniques came to the American public’s attention in 1969, when NBC aired the documentary *Wolves and the Wolf Men*, which depicted Alaskan wolves being killed through the use of aircraft.<sup>243</sup> In response to the resulting

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<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> S.D. Sen. 114, 2009 Leg. Assembly, 84th Sess. §§ 1, 4.

<sup>236</sup> *Id.* at § 1.

<sup>237</sup> S.D. Legis., *2009 Session-Bill History*, <http://legis.state.sd.us/sessions/2009/Bill.aspx?Bill=114> (last accessed Mar. 13, 2010); S.D. Legis., *84th Legislative Session Calendar*, <http://legis.state.sd.us/sessions/2009/calendar.pdf> (last accessed Mar. 13, 2010).

<sup>238</sup> Neb. Leg. Res. 229, 101st Leg., 1st Sess. (May 18, 2009); Neb. Legis., *Legislative Document*, [http://nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=9125](http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=9125) (last accessed Mar. 13, 2010).

<sup>239</sup> Tenn. H. 1428, 106th Gen. Assembly (Feb. 17, 2009); Tenn. H. 1361, 106th Leg. (Feb. 12, 2009).

<sup>240</sup> Tenn. H. 1361, 106th Leg. § 1; Tenn. Code Ann. § 53-7-101 (Lexis 2010).

<sup>241</sup> Tenn. H. 1428, 106th Gen. Assembly §§ 2–3.

<sup>242</sup> Tenn. Gen. Assembly, *Bill Information for HB 1428*, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1428> (last accessed Mar. 13, 2010); Tenn. Gen. Assembly, *Bill Information for HB 1361*, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1361> (last accessed Mar. 13, 2010).

<sup>243</sup> Edward A. Fitzgerald, *The Alaskan Wolf War: The Public Trust Doctrine Missing in Action*, 15 *Animal L.* 193, 206 (2009).

public outrage, Congress enacted the Federal Airborne Hunting Act,<sup>244</sup> which made aerial hunting illegal without a permit.<sup>245</sup>

The permit requirement proved to be a sizeable loophole, however, and the practice continued largely unabated.<sup>246</sup> Various groups and individuals have attempted to limit the exploitation of this loophole, but their efforts have been largely unsuccessful.<sup>247</sup> Opponents of aerial hunting fear that Alaska's use of this loophole could prompt other states to follow suit.<sup>248</sup>

One state that has followed Alaska's lead is Texas, which recently proposed legislation to strengthen property owners' ability to hunt feral hogs on their property.<sup>249</sup> The bill, sponsored by Representatives Sid Miller, Wayne Christian, and Ryan Guillen, would have amended Texas Parks and Wildlife Code § 43.109 to allow the aerial hunting of feral hogs on private property, either by the owner of the property or by anyone the owner authorized.<sup>250</sup> The bill passed the House but ultimately died in the Senate Natural Resources Committee.<sup>251</sup>

Texas Parks and Wildlife Code § 43.109 allows the Texas Parks and Wildlife Commission to regulate "management" of wildlife by aircraft.<sup>252</sup> Under the section, the Commission may establish procedures for permit application and the management of wildlife by aircraft, limit the time and place where aerial hunting may occur, and "require, limit, or prohibit any activity as necessary to implement the subchapter."<sup>253</sup> Had it become law, the bill would have added a section to Texas Parks and Wildlife Code § 43.109 precluding the Commission from adopting "a proclamation or regulation" prohibiting a person authorized by the property owner from using a helicopter to hunt feral hogs on the owner's private property.<sup>254</sup>

Previous versions of the bill would have amended Texas Parks and Wildlife Code § 62.003 by adding feral hogs to the list of exceptions—which already includes alligators, frogs, and turtles—to the general rule that wildlife may not be hunted from aircraft.<sup>255</sup> The original bill was criticized as not accomplishing the goal of helping landowners

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<sup>244</sup> 16 U.S.C. § 742j-1 (2000).

<sup>245</sup> *Id.* at § 742j-1(a).

<sup>246</sup> Fitzgerald, *supra* n. 243.

<sup>247</sup> *Id.* at 233.

<sup>248</sup> Defenders of Wildlife, *Aerial Gunning*, [http://www.defenders.org/programs\\_and\\_policy/policy\\_and\\_legislation/aerial\\_gunning.php](http://www.defenders.org/programs_and_policy/policy_and_legislation/aerial_gunning.php) (last accessed Mar. 13, 2010).

<sup>249</sup> Tex. Leg. Online, *81(R) Actions for HB 836*, <http://www.legis.state.tx.us/BillLookup/actions.aspx?LegSess=81R&Bill=HB836> (last accessed Mar. 13, 2010).

<sup>250</sup> Tex. H. 836, 81st Reg. Sess. § 1 (May 17, 2009) (available at <http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/HB00836E.pdf> (last accessed Mar. 13, 2010)) (enrolled version).

<sup>251</sup> Tex. Leg. Online, *History, Bill HB 836*, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB836> (last accessed Mar. 13, 2010).

<sup>252</sup> Tex. Parks and Wildlife Code Ann. § 43.109 (2002).

<sup>253</sup> *Id.*

<sup>254</sup> Tex. H. 836, 81st Reg. Sess. § 1(c).

<sup>255</sup> Tex. H. 836, 81st Reg. Sess. (introduced version).

recoup the cost of the required permit, and the change was presumably in response to such criticism.<sup>256</sup>

The targeted hogs are a non-native, highly-prolific species that cause tremendous damage to crops and property each year.<sup>257</sup> Estimates of the amount of damage vary widely, ranging from \$52 million to \$400 million annually.<sup>258</sup> Two million feral hogs are estimated to live in Texas.<sup>259</sup> The hogs are not dangerous to humans, but they can carry diseases that have the potential to devastate livestock.<sup>260</sup> Almost 90% of Texas counties contain the hogs, and they have begun to spread from rural into suburban areas.<sup>261</sup> While aerial hunting is not a method that could be used everywhere, the authors of the bill claim that 75% of Texas has suitable terrain for aerial hunting.<sup>262</sup> The authors of the bill also claim that this method of hunting is a cost-effective means of eliminating the hogs where the animals have adjusted to traditional trapping efforts or wherever it is possible to kill more than thirty hogs per hour.<sup>263</sup>

Opponents of the bill claim that the current law, which allows for hunting of feral hogs on land, is sufficient.<sup>264</sup> Susan Hendrix of the Texas Humane Legislation Network claims that low-flying helicopters are disruptive to habitats and other animals and that aerial hunting is less precise than trapping or ground hunting, causing the animals to be hit but not killed.<sup>265</sup> Other opponents are concerned about the general safety risks and noise nuisances that result from gunfire out of helicopters.<sup>266</sup>

There is also concern about carcass removal: Some of the hogs can weigh hundreds of pounds and, because their meat cannot be used, there is little incentive to remove them at all.<sup>267</sup> Opponents worry that decomposing carcasses could pose health risks, especially if left near a water source.<sup>268</sup> Furthermore, the hunting would generally be done on private property, so carcass removal may not be subject to regulations.<sup>269</sup>

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<sup>256</sup> Tex. H. Research Org. Bill Analysis, H. 836, 81st Reg. Sess. 3 (May 8, 2009).

<sup>257</sup> Christy Hoppe, *Texas Legislature '09: Bill Would Authorize Helicopter Hunting of Feral Hogs*, [http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/legislature/stories/DN-hogwild\\_30tex.ART.State.Edition1.46c80f1.html](http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/legislature/stories/DN-hogwild_30tex.ART.State.Edition1.46c80f1.html) (Jan. 30, 2009) (last accessed Mar. 31, 2010); Tex. Sen. Research Ctr. Bill Analysis, H. 836, 81st Reg. Sess. (May 8, 2009).

<sup>258</sup> Hoppe, *supra* n. 257; Tex. Sen. Research Ctr. Bill Analysis, H.B. 836.

<sup>259</sup> Tex. Sen. Research Ctr. Bill Analysis, H. 836, 81st Reg. Sess.

<sup>260</sup> Hoppe, *supra* n. 257.

<sup>261</sup> *Id.*

<sup>262</sup> Tex. Sen. Research Ctr. Bill Analysis, H. 836, 81st Reg. Sess.

<sup>263</sup> *Id.*

<sup>264</sup> Hoppe, *supra* n. 257, at ¶ 14.

<sup>265</sup> *Id.*

<sup>266</sup> Tex. H. Research Org. Bill Analysis, H. 836, 81st Reg. Sess. at 2 (May 8, 2009).

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 2–3.

<sup>269</sup> *Id.* at 3.

### C. Pet Protective Orders

A growing body of research strongly suggests a correlation between animal abuse and domestic violence. In 1997, researchers asked fifty of the United States' largest battered-women's shelters to participate in a study regarding incidence of pet abuse by their abusers.<sup>270</sup> Of the shelters that responded to the survey, 85.4% reported that they had encountered women who spoke of pet abuse, and 63% reported that children accompanying their mothers had spoken of pet abuse.<sup>271</sup> In 2001, two of the researchers from the 1997 study conducted a follow-up study of 101 battered women who had entered a shelter and 120 non-battered women.<sup>272</sup> All of the women participating in this study had pets currently or in the past year.<sup>273</sup> The researchers found that 54% of the battered women reported that their partner hurt or killed pets, compared to 5% of the non-battered women.<sup>274</sup>

Last year, in response to this issue, sixteen state legislatures considered legislation to include companion animals in protective orders.<sup>275</sup> Protective orders—also known as restraining orders—are court orders that forbid a party from engaging in certain conduct and are often used to prevent family violence.<sup>276</sup> The bills proposed in Hawaii, Illinois, North Carolina, and Washington have been signed into law.<sup>277</sup> Hawaii law authorizes family court judges to issue an ex parte restraining order to prevent a party from “taking, concealing, removing, threatening, physically abusing, or otherwise disposing of” a pet.<sup>278</sup> The new law in North Carolina allows a judge to provide for the

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<sup>270</sup> Frank R. Ascione, *Children and Animals: Exploring the Roots of Kindness and Cruelty* 129 (Purdue U. Press 2005).

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 130.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> 2009 N.C. Laws 425 §§ 1(a)(8), 1(9)(b)(1); Ill. H. 3918, 96th Gen. Assembly § 213(b-5)(4) (Feb. 26, 2009); Haw. Sen. 1086, 25th Leg., Reg. Sess. §§ 2(1)(a)(3), 2(2)(c) (Jan. 26, 2009); Neb. Leg. 83, 101st Leg., 1st Sess. § 1(2)(g)–(h) (Jan. 8, 2009); Ariz. Sen. 1278, 49th Leg., 1st Reg. Sess. § 1.G.7 (Jan. 28, 2009); Iowa H. File 32, 83d Gen. Assembly §§ 1(6), 2(2)(b), 3(f) (Jan. 16, 2009); Iowa Sen. File 119, 83d Gen. Assembly §§ 1(6), 2(2)(b), 3(f) (Feb. 9, 2009); Tex. H. 853, 81st Reg. Sess. §§ 1(1)(C), 2(b)(7), 3(a)(5) (Jan. 29, 2009); Tex. Sen. 1840, 81st Reg. Sess. §§ 1(1)(C), 2(b)(7), 3(a)(5) (Mar. 11, 2009); N.M. H. 434, 49th Leg., 1st Sess. § 5(A)(5) (Jan. 28, 2009); Va. H. 2381, 2009 Gen. Assembly, 1st Reg. Sess. §§ 1(16.1-253)(A)(7), 1(16.1-253.1)(A)(8), 1(16.1-253.4)(B)(4), 1(16.1-279.1)(A)(8), 1(19.2-152.8)(B)(3), 1(19.2-152.9)(A)(3), 1(19.2-152.10)(A)(3) (Jan. 14, 2009); Md. Sen. 736, 2009 Gen. Assembly, 1st Reg. Sess. §§ 4-505(a)(2)(VIII), 4-506(d)(14) (Feb. 6, 2009); Ga. H. 429, 2009–2010 Gen. Assembly § 1(a)(12) (Feb. 17, 2009); S.C. H. 3117, Gen. Assembly, 118th Sess. § 1 (Dec. 9, 2008); Del. H. 77, 145th Gen. Assembly ¶ 8 (Mar. 10, 2009); Mass. H. 1499, 186th Gen. Ct. (Jan. 13, 2009); Mass. H. 1319, 186th Gen. Ct. (Jan. 13, 2009); 2009 Wash. Laws 439 §§ 1, 2(1)(k), 3(1)(a)(iv) (Jan. 14, 2009); Wyo. H. 206, 2009 Gen. Sess. §§ 1(a)(viii), 1(b)(vi) (Jan. 16, 2009).

<sup>276</sup> *Black's Law Dictionary* 1343, 1428–29 (Bryan A. Garner ed., 9th ed., West 2009).

<sup>277</sup> Haw. Rev. Stat. § 586-4 (2009); 22 Ill. Comp. Stat. § 213(b-5)(4); N.C. Gen. Stat. § 50B-3(a) (Lexis 2009); Wash. Code §§ 26.50.060, 26.50.110 (2009).

<sup>278</sup> Haw. Rev. Stat. § 586-4(a).

care and custody of a pet owned by either party or a minor child, as well as to forbid a party from abusing the animal.<sup>279</sup> In Illinois, one of the many changes made to the Civil No-Contact Order Act was to allow a court to order the respondent to stay away from the petitioner's property or animal and to forbid the respondent from "taking, transferring, encumbering, concealing, harming, or otherwise disposing of the property or animal."<sup>280</sup> In Washington, the new law will, among other things, allow a court to prevent the respondent from going where the animal is known to be found.<sup>281</sup>

Wyoming considered a bill that, along with allowing a court to "[d]irect the care, custody, and control" of the pet, would have allowed local law enforcement agencies to provide or arrange for temporary care of any pet owned by either party or by a minor child in the household.<sup>282</sup> The remainder of the bills introduced are substantially similar to those discussed *supra* in their operative terms, generally allowing a court to grant possession or custody of the pet and to order the respondent to stay away from the pet. The Massachusetts bills are currently pending.<sup>283</sup> The bills from South Carolina, Georgia, and Nebraska have been carried over until the next session.<sup>284</sup> The bill from Delaware passed the House.<sup>285</sup> The Maryland bill passed the Senate.<sup>286</sup> The Texas Senate bill died in committee.<sup>287</sup> The Texas House bill passed both houses but has not yet been transmitted to the governor's office.<sup>288</sup> The Iowa Senate bill passed the Senate.<sup>289</sup> Action on the bills from Virginia, New Mexico, and Arizona has been postponed indefinitely, indicating that the bills have died.<sup>290</sup>

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<sup>279</sup> N.C. Gen. Stat. § 50B-3(a).

<sup>280</sup> 22 Ill. Comp. Stat. § 213(b-5)(4).

<sup>281</sup> Wash. Rev. Code §§ 26.50.060, 26.50.110.

<sup>282</sup> Wyo. H. 206, 2009 Gen. Sess. §§ 1(a)(viii), 1(b)(vi).

<sup>283</sup> 186th Gen. Ct. of The Cmmw. of Mass., *House No. 1499*, <http://www.mass.gov/legis/186history/h01499.htm> (last accessed Mar. 13, 2010); 186th Gen. Ct. of The Cmmw. of Mass., *House No. 1319*, <http://www.mass.gov/legis/186history/h01319.htm> (last accessed Mar. 13, 2010).

<sup>284</sup> S.C. Leg. Online, *S 0480 Concurrent Res.*, [http://www.scstatehouse.gov/cgi-bin/web\\_bh10.exe](http://www.scstatehouse.gov/cgi-bin/web_bh10.exe), search "480" (last accessed Mar. 13, 2010); Ga. Gen. Assembly, *HB 429*, [http://www.legis.state.ga.us/legis/2009\\_10/sum/hb429.htm](http://www.legis.state.ga.us/legis/2009_10/sum/hb429.htm) (last accessed Mar. 13, 2010); Neb. Leg., *LB83*, [http://nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=6378](http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=6378) (last accessed Mar. 13, 2010).

<sup>285</sup> St. of Del., *145th Delaware General Assembly House Bill #77*, <http://legis.delaware.gov/lis/lis145.nsf/vwLegislation/HB+77> (last accessed Mar. 13, 2010).

<sup>286</sup> Md. Gen. Assembly, *Senate Bill 736*, <http://mlis.state.md.us/2009rs/billfile/sb0736.htm> (last updated Nov. 30, 2009) (last accessed Mar. 13, 2010).

<sup>287</sup> Tex. Legis. Online, *History, Bill: SB 1840*, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1840> (last accessed Mar. 13, 2010).

<sup>288</sup> Tex. Legis. Online, *Bill Stages, Bill: HB 853*, <http://www.legis.state.tx.us/BillLookup/BillStages.aspx?LegSess=81R&Bill=HB853> (last accessed Mar. 13, 2010).

<sup>289</sup> Iowa Leg., *Bill History for SF 119*, <http://www.legis.state.ia.us/index.html>; *path* Quick Find: Bills and Iowa Code, search "SF119," select Current Bill History (last accessed Mar. 13, 2010).

<sup>290</sup> Va. Gen. Assembly, *Legislative Information System, Bill Tracking, HB2381, 2009 Session*, <http://leg1.state.va.us/091/lis.htm>; *path* 2009 Session, select Bills and Resolu-

#### D. Pet Lemon Laws

Pet lemon laws are designed for consumer protection against deceptive practices by pet dealers.<sup>291</sup> By mid-2009, twenty states had such laws in place.<sup>292</sup> Last year, Connecticut amended its pet lemon law, Pennsylvania proposed a bill to do the same, and Mississippi and Hawaii proposed bills to create pet lemon laws.<sup>293</sup>

The enactment of Public Law No. 09-228 made several changes to Connecticut's pet lemon law. The new law applies if, within twenty days of sale (previously fifteen), the dog or cat becomes ill or dies from an illness that existed at the time of sale.<sup>294</sup> It also adds a provision for congenital defects diagnosed within six months of sale.<sup>295</sup> The law then provides that if such an illness or defect is discovered in the specified time frame, the purchaser may be refunded the purchase price or the animal may be exchanged.<sup>296</sup> It also provides that any costs incurred due to such illness or defect shall be borne by the seller, not to exceed \$500 (previously \$200).<sup>297</sup> The new law further requires that every dog sold by a pet shop licensee be accompanied by a certificate of origin.<sup>298</sup> It also prohibits the purchase by a pet shop licensee of a dog or cat from any source outside of the state that is not licensed by the USDA and any applicable state agency.<sup>299</sup>

Pennsylvania also proposed a bill to amend its pet lemon law, which is currently pending.<sup>300</sup> This law, which only applies to dogs,

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tions, *search* "HB2381" (last accessed Mar. 31, 2010); N.M. Legis., *2009 Regular Session, HB 434*, <http://legis.state.nm.us/lcs/BillFinderNumber.aspx>; *select* 2009 Regular, *select* House, *select* Bill, *search* "434" (last accessed Mar. 31, 2010); Ariz. St. Legis., *Bill Status Overview, SB1278*, <http://www.azleg.gov/bills.asp>; *path* Senate Bills, *select* SB 1251 through SB 1300, *select* SB 1278, *select* Bill Overview (last accessed Mar. 31, 2010).

<sup>291</sup> See e.g. Penn. S. 50, 2009 Sess. 1:1-6 (Jan. 20, 2009) (available at <http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>; *path* By Bill, *select* 2009-2010 Regular Session, *search* "SB50," *select* Text (last accessed Mar. 13, 2010)) (enhancing protection for dog purchasers in an existing law entitled "An act prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce").

<sup>292</sup> Am. Veterinary Med. Assn., *State Legislative Resources, Issues, Pet Lemon Laws*, [http://www.avma.org/advocacy/state/issues/pet\\_lemon\\_laws.asp](http://www.avma.org/advocacy/state/issues/pet_lemon_laws.asp) (last updated June 2009) (last accessed Mar. 31, 2010).

<sup>293</sup> 2009 Conn. Pub. Act 09-228 § 2(b) (July 8, 2009) (available at [www.cga.ct.gov/2009/act/Pa/pdf/2009PA-00228-R00SB-00499-PA.pdf](http://www.cga.ct.gov/2009/act/Pa/pdf/2009PA-00228-R00SB-00499-PA.pdf) (last accessed Mar. 13, 2010)); Penn. S. 50, 2009 Sess. (Jan. 20, 2009); Miss. S. 3178, 2009 Reg. Sess. (Jan. 19, 2009) (available at <http://index.ls.state.ms.us/2009Session.html>; *path* All Measures, *select* Senate Bills, *search* "pet lemon law," *select* sb3178in.pdf (last accessed Mar. 31, 2010)); Haw. H. 1842, 2009 Reg. Sess. (Jan. 28, 2009) (available at [http://www.capitol.hawaii.gov/session2009/bills/HB1842\\_.pdf](http://www.capitol.hawaii.gov/session2009/bills/HB1842_.pdf) (last accessed Mar. 13, 2010)).

<sup>294</sup> 2009 Conn. Pub. Act 09-228 § 2(b).

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.* at 3(b).

<sup>299</sup> *Id.*

<sup>300</sup> Penn. S. 50, 2009 Sess.

would increase the time limits from ten days to fourteen days for illnesses to be discovered by the purchaser, and from thirty days to ninety days for a congenital defect to be discovered.<sup>301</sup> The law would also increase the amount of time from two to five days that the purchaser has to notify the seller after a veterinarian diagnoses the illness or defect.<sup>302</sup> External and intestinal parasites that do not result in the dog's clinical illness or death would be specifically excluded from the law's application, as would illnesses most likely contracted after the sale or that the purchaser was notified of in writing at the time of sale.<sup>303</sup> The Mississippi bill, which died in committee, would have, among other things, set up a rebuttable presumption that the illness or congenital defect existed at the time of sale if the dog or cat dies within fifteen days of purchase.<sup>304</sup>

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<sup>301</sup> *Id.* at § 9.3(b), (b.1)(1).

<sup>302</sup> *Id.* at § 9.3(c)(6).

<sup>303</sup> *Id.* at § 9.3(b.2).

<sup>304</sup> Miss. S. 3178, 2009 Reg. Sess. § 7.

