

2010 LEGISLATIVE REVIEW

By
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REVIEW EDITOR'S NOTE

It is my pleasure to introduce the thirteenth annual edition of *Animal Law's* Legislative Review. This review discusses selected animal-related legislation considered by the federal and state legislatures during their 2010 legislative sessions.

The purpose of this review is to highlight a handful of the most important, groundbreaking, or interesting legislative developments of the past year, as well as to provide an educational tool for readers interested in gaining a greater understanding of animal law issues. We hope that this article will supply readers with valuable information regarding animal-related legislation and will help further the development of the field of animal law. As always, *Animal Law* welcomes comments and suggestions for future editions of the Legislative Review.

Jennifer O'Brien
Legislative Review Editor

I. FEDERAL LEGISLATION	416
A. <i>Crush Videos</i>	416
B. <i>Animals and the Military</i>	418
1. <i>Dog Training Therapy for Veterans</i>	418
2. <i>Use of Animals in Combat Training</i>	419
C. <i>Puppy Mills</i>	421
D. <i>Prevention of Farm Animal Cruelty</i>	423
E. <i>Compound 1080 and Sodium Cyanide Elimination Act</i> ...	424
F. <i>Migratory Bird Treaty Act Penalties</i>	426

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	<i>G. Importation and Possession of Non-native Snakes</i>	428
II.	STATE LEGISLATION	430
	<i>A. Importation and Possession of Non-native Snakes</i>	431
	<i>B. Livestock Care Standards</i>	433
	<i>C. Right-to-Hunt Constitutional Amendments</i>	438
	<i>D. Euthanasia of Dogs and Cats</i>	440
	<i>E. Primates as Pets</i>	442

I. FEDERAL LEGISLATION

The 111th Congress adjourned on December 29, 2010.¹ The most significant animal-related bill passed during the 2010 session was likely the Animal Crush Video Prohibition Act. However, many other bills that did not become law also warrant attention for their potential advancement of animal protection. The following discussion highlights several of these key bills that were actively pursued during 2010, two of which were already reintroduced in the 112th Congress. As this issue of *Animal Law* goes to press, it is unknown whether Congress will reconsider any of the other legislation discussed here.

A. Crush Videos

Enacted in December 1999, 18 U.S.C. § 48 made it a crime to knowingly create, sell, or possess “a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain.”² A primary motivation for the statute’s enactment was to restrict the sale of “crush videos,” which are films that typically feature a woman crushing small animals to death with her bare feet or high-heeled shoes.³ The videos appeal to viewers with a particular sexual fetish for this type of animal torture.⁴ Although such torture was already illegal under most state anti-cruelty laws,⁵ the videos obscured the identities of the torturers and the location and date of filming, making the crimes notoriously difficult to prosecute.⁶ By targeting the sale and distribution of crush videos under § 48, law enforcement officials were able to work around these difficulties, and the market for the films subsequently dwindled.⁷

Approximately ten years later, however, the United States Supreme Court struck down § 48 as a violation of the First Amendment right to freedom of speech.⁸ In *U.S. v. Stevens*, the statute was used to prosecute an individual for selling depictions of animal fighting, in-

¹ U.S. Govt. Printing Off., *Years and Session Dates of the U.S. Congress*, http://www.gpoaccess.gov/help/congress_table.html (updated Jan. 5, 2011) (accessed Apr. 2, 2011).

² 18 U.S.C. § 48(a) (1999) (repealed 2010).

³ H.R. Rpt. 106-397 at 2 (Oct. 19, 1999).

⁴ H.R. Rpt. 111-549 at 2 (July 19, 2010).

⁵ *U.S. v. Stevens*, 130 S. Ct. 1577, 1583 (2010).

⁶ H.R. Rpt. 111-549 at 3.

⁷ *Id.*

⁸ *Stevens*, 130 S. Ct. at 1592.

cluding dog-fighting videos filmed in countries where the practice was allegedly legal.⁹ The court invalidated § 48 due to overbreadth, holding that its broad wording had the potential to encompass numerous instances of constitutionally protected speech.¹⁰ The Court noted, however, that it was not deciding whether a statute limited to crush videos or other extreme depictions of animal cruelty would pass constitutional scrutiny.¹¹ It thus left the door open for Congress to pass a more narrowly tailored law.

In the wake of the Court's decision, the market for crush videos reemerged.¹² Congress responded with H.R. 5566, the Animal Crush Video Prohibition Act of 2010.¹³ Representative Elton Gallegly (R-Cal.) introduced the bill in June, and Senator Jon Kyl (R-Ariz.) introduced a companion bill, Sen. 3841, in September.¹⁴ H.R. 5566 received overwhelming bipartisan support, eventually passing both the House and the Senate.¹⁵ It was signed by the President on December 9, 2010, and became P.L. 111-294.¹⁶

The new law, also codified as 18 U.S.C. § 48, revises the previous prohibition against depictions of animal cruelty to specifically prohibit interstate commerce in animal crush videos.¹⁷ It defines an "animal crush video" as an image that "depicts actual conduct in which [one] or more living non-human mammals, birds, reptiles, or amphibians is intentionally crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury" and is "obscene."¹⁸ In the judgment of Congress, crush videos qualify as obscene because they "appeal to the prurient interest in sex; are patently offensive; and lack serious literary, artistic, political or scientific value."¹⁹ Because the Supreme Court has long held that obscenity falls outside First Amendment protections, proponents of the law believe that the reference to obscenity will help ensure it passes constitutional scrutiny.²⁰

⁹ *Id.* at 1583. Some of the dogfights were filmed in Japan, where the practice is legal. However, the parties disputed whether the fights were unlawful at the time they occurred. *Id.*

¹⁰ *Id.* at 1592.

¹¹ *Id.*

¹² H.R. Rpt. 111-549 at 5.

¹³ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "hr 5566," *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 5566 Summary].

¹⁴ *Id.*; Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "s 3841," *select* All Information (accessed Apr. 2, 2011).

¹⁵ H.R. 5566 Summary, *supra* n. 13.

¹⁶ *Id.*

¹⁷ Pub. L. No. 111-294, § 3(a), 124 Stat. 3177-79 (2010).

¹⁸ *Id.* (amendment to 18 U.S.C. § 48(a)(1)-(2)).

¹⁹ H.R. 5566, 111th Cong. § 2(6)(A)-(C) (Jan. 5, 2010).

²⁰ *Id.* at § 2(5); *see also* H.R. Jud. Comm., *United States v. Stevens: The Supreme Court's Decision Invalidating the Crush Video Statute*, 111th Cong. 48-49 (May 26, 2010) (explaining that a law banning crush videos that are obscene would be constitutional).

In addition, the new law applies in more limited circumstances than the 1999 statute, making it illegal to “knowingly sell, market, advertise, exchange, or distribute an animal crush video in, or using a means or facility of, interstate or foreign commerce.”²¹ It also bans the creation of crush videos if those involved have reason to know the video will be distributed in interstate commerce.²² It contains explicit exemptions for depictions of “hunting, trapping, or fishing,” the “slaughter of animals for food,” or “customary and normal veterinary or agricultural husbandry practices.”²³ It also exempts the “good faith distribution” of crush videos to law enforcement or to a third party to analyze whether referral to law enforcement is appropriate.²⁴ Violators of the law are subject to a fine, up to seven years imprisonment, or both.²⁵

While there was little criticism of the new more narrowly tailored version of § 48 upon passage, it could still face legal challenges in the future.²⁶ Some may question whether crush videos qualify as “obscene” because the videos do not depict sexual acts.²⁷ Others claim that the law could still infringe on freedom of speech.²⁸ Such challenges will be left for the courts to decide.

B. *Animals and the Military*

1. *Dog Training Therapy for Veterans*

In recent years, a number of programs have emerged that use service dog training as a therapeutic medium to address post-traumatic stress disorder (PTSD) and other post-deployment mental illnesses in veterans.²⁹ For example, in the “Paws for Purple Hearts” service dog training program at the Walter Reed Army Medical Center, veterans participate in a specialized dog-training program with the goal of improving their emotional and physical health, learning skills in a meaningful occupation, and placing successfully trained dogs with fellow physically impaired veterans.³⁰ Veteran participants report better

²¹ 124 Stat. at 3178 (amendment to 18 U.S.C. § 48(b)(2)); *see also* Kathleen Ann Ruane, *Banning Crush Videos: The Animal Crush Video Act of 2010* 4–5 (Cong. Research Serv. 2010) (comparing the two laws).

²² 124 Stat. at 3178 (amendment to 18 U.S.C. § 48(b)(1)(A)–(B)).

²³ *Id.* (amendment to 18 U.S.C. § 48(e)(1)).

²⁴ *Id.* (amendment to 18 U.S.C. § 48(e)(2)).

²⁵ *Id.* (amendment to 18 U.S.C. § 48(d)).

²⁶ Bill Mears, CNN Pol., *Obama Signs Law Banning ‘Crush Videos’ Depicting Animal Cruelty*, http://articles.cnn.com/2010-12-10/politics/animal.cruelty_1_dog-fighting-videos-crush-videos-animal-cruelty?_s=PM:POLITICS (Dec. 10, 2010) (accessed Apr. 2, 2011).

²⁷ *Id.*

²⁸ *See* Publishers Wkly. Staff, *New ‘Crush’ Law Raises Concerns for ABFFE*, <http://www.publishersweekly.com/pw/by-topic/industry-news/bookselling/article/45538-new-crush-law-raises-concerns-for-abffe.html> (Dec. 16, 2010) (accessed Apr. 2, 2011) (explaining the concerns that the law may affect booksellers).

²⁹ H.R. Rpt. 111-490 at 2–3 (May 20, 2010).

³⁰ *Id.*

emotional regulation, improved sleep patterns and feelings of personal safety, as well as decreased anxiety and social isolation.³¹ However, despite this anecdotal evidence of the program's benefits, proponents acknowledge a lack of measurable scientific data on the value of this dog-training therapy model.³²

Recognizing the need for further research on the subject, Representative Henry E. Brown Jr. (R-S.C.) introduced H.R. 3885, the Veterans Dog Training Therapy Act, in 2009.³³ H.R. 3885 directs the Secretary of Veterans Affairs (VA) to assess whether therapy through the training of service dogs improves mental health and PTSD symptoms in veterans.³⁴ It requires that three to five VA medical centers conduct a five-year program in which they educate veterans in the "art and science of assistance dog training and handling."³⁵ It further requires the VA to provide annual program reports to Congress detailing the veterans' progress.³⁶

H.R. 3885 passed the House in May 2010 and was referred to the Senate, remaining in the Senate Committee on Veterans' Affairs where it died at the close of the congressional session.³⁷ However, on the first day of the 112th Congress, Representative Michael Grimm (R-N.Y.) introduced similar legislation. The new bill, H.R. 198, has received praise from the animal welfare community for allowing the use of shelter dogs in the program, a provision not contained in H.R. 3885.³⁸ As of this writing, H.R. 198 remains in the House Committee on Veterans' Affairs.³⁹

2. *Use of Animals in Combat Training*

While dog-training therapy helps disabled veterans recover from the mental traumas of war, goats, pigs, and monkeys suffer physical injury as the military uses them to prepare for battle.⁴⁰ Currently, the Department of Defense (DOD) uses live goats and pigs to train physicians, medics, and corpsmen how to respond to injuries sustained dur-

³¹ *Id.* at 3.

³² *Id.*

³³ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "hr 3885," *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 3885 Summary].

³⁴ H.R. 3885, 111th Cong. § 2(a) (May 26, 2010).

³⁵ *Id.* at § 2(b)–(c).

³⁶ *Id.* at § 2(h).

³⁷ H.R. 3885 Summary, *supra* n. 33.

³⁸ Lib. Cong., THOMAS, *Search Bill Summary and Status 112th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "hr 198," *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 198 Summary]; Humane Socy. of the U.S., *The Humane Society of the United States Applauds Rep. Grimm for Seeking to Help Veterans and Shelter Dogs*, http://www.humanesociety.org/news/press_releases/2011/01/rep_grimm_veterans_010611.html (Jan. 6, 2011) (accessed Apr. 2, 2011).

³⁹ H.R. 198 Summary, *supra* n. 38.

⁴⁰ H.R. 4269, 111th Cong. § 2(2) (Dec. 10, 2009).

ing combat.⁴¹ Every year, these training courses subject over 8,500 goats and pigs to bullet wounds, lacerations, burns, and amputations during battlefield simulation exercises.⁴² The DOD also uses live monkeys to train medical personnel to treat casualties of chemical and biological agent attacks.⁴³ In the chemical casualty care courses, vervet monkeys are given a toxic chemical overdose to simulate exposure to nerve gas, inducing seizures, breathing difficulty, and death.⁴⁴

In an effort to end these practices, Representative Bob Filner (D-Cal.) introduced H.R. 4269, the Battlefield Excellence through Superior Training Practices Act (BEST Practices Act), in 2009.⁴⁵ The bill proposes a complete phaseout of the use of live animals in military combat and chemical casualty care training by October 1, 2013 in favor of human-based methods.⁴⁶ It highlights that the civilian sector has almost exclusively switched to human-based training methods for numerous medical procedures, while the military still uses animals.⁴⁷ It further notes the availability of simulator models for training responses to common battlefield injuries as well as chemical and biological agent attacks.⁴⁸

The BEST Practices Act was referred to the House Subcommittee on Military Personnel in January 2010, and no further action on the bill was taken before the congressional session ended.⁴⁹ However, in January 2011, Representative Filner reintroduced the legislation in the 112th Congress.⁵⁰ The new bill, H.R. 403, is identical to H.R. 4269 except that it extends the phaseout period to October 2014.⁵¹ The bill was referred to the House Subcommittee on Military Personnel, where it remains.⁵²

⁴¹ *Id.*

⁴² Phys. Comm. for Responsible Med., *Citizen Lobbyists Urge Congress to End Military's Use of Animals*, <http://www.pcrm.org/newsletter/feb10/citizen.html> (updated Feb. 2010) (accessed Apr. 2, 2011).

⁴³ H.R. 4269, 111th Cong. at § 2(2).

⁴⁴ Phys. Comm. for Responsible Med., *supra* n. 42; N.Y.C. Bar, Comm. on Leg. Issues Pertaining to Animals, *H.R. 4269 2*, <http://www.nycbar.org/pdf/report/uploads/20071979-CommentonBattlefieldExcellencethroughSuperiorTrainingPracticesAct.pdf> (accessed Apr. 2, 2011).

⁴⁵ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "hr 4269," *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 4269 Summary].

⁴⁶ H.R. 4269, 111th Cong. at § 3 (amendment to 10 U.S.C. § 2016 (a)(1)–(b)(2)).

⁴⁷ *Id.* at § 2(3).

⁴⁸ *Id.* at § 2(4)–(6).

⁴⁹ H.R. 4269 Summary, *supra* n. 45.

⁵⁰ Lib. Cong., THOMAS, *Search Bill Summary and Status 112th Congress*, <http://thomas.loc.gov/home/LegislativeData.php?&n=BSS&c=112>; *select* Bill Number, *search* "hr 403"; *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 403 Summary].

⁵¹ H.R. 403, 112th Cong. § 3(a) (amendment to 10 U.S.C. § 2017).

⁵² H.R. 403 Summary, *supra* n. 50.

C. Puppy Mills

An often hidden aspect of commercial dog breeding, puppy mills frequently house hundreds of puppies and dogs in cramped, unsanitary conditions for the purpose of increased profits.⁵³ The dogs bred or raised in these puppy mills often live their entire lives in small cages with no opportunity for exercise, little socialization, and minimal human interaction.⁵⁴ Puppies from these facilities commonly suffer serious health problems because of improper care, leaving consumers with sick or dying dogs and expensive vet bills.⁵⁵

Under the federal Animal Welfare Act (AWA),⁵⁶ wholesale dog dealers (breeders and brokers such as those who sell to pet stores) are regulated, licensed, and inspected by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA).⁵⁷ These dealers must comply with minimum AWA standards for animal care and treatment.⁵⁸ However, in May 2010, an audit conducted by the USDA's Inspector General (IG) found that APHIS's enforcement of the AWA was ineffective against problematic dog dealers, including puppy mills.⁵⁹ The investigation showed that large commercial breeders who sell puppies online are able to entirely circumvent the AWA because the law does not regulate direct sales to the public.⁶⁰ Because of this massive regulatory loophole, the puppy mill industry has flourished.⁶¹

Shortly after release of the IG's scathing report, Senator Richard Durbin (D-Ill.) and Representative Sam Farr (D-Cal.) introduced legis-

⁵³ U.S. Sen. Dick Durbin, *In Response to IG Report, Durbin, Vitter Call for Reform of Agency Responsible for Policing Puppy Mills*, <http://durbin.senate.gov/showRelease.cfm?releaseId=325232> (May 25, 2010) (accessed Apr. 2, 2011); see also Am. Socy. for the Prevention of Cruelty to Animals (ASPCA), *Laws that Protect Dogs in Puppy Mills*, <http://www.aspca.org/fight-animal-cruelty/puppy-mills/laws-that-protect-dogs.aspx> (accessed Apr. 2, 2011) (defining puppy mills).

⁵⁴ Humane Socy. of the U.S., *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, http://www.humanesociety.org/news/press_releases/2010/05/federal_puppy_mill_bill_052510.html (May 25, 2010) (accessed Apr. 2, 2011) [hereinafter *Abusive Puppy Mills*].

⁵⁵ *Id.*

⁵⁶ 7 U.S.C. §§ 2131, 2143 (2006). The AWA sets minimum standards of care and treatment for certain animals used in research, exhibited to the public, commercially transported, or bred for commercial sale. *Id.*

⁵⁷ 9 C.F.R. § 2.1(a)(1) (2004); U.S. Dept. of Ag. Animal & Plant Health Inspection Serv., *Animal Welfare*, http://www.aphis.usda.gov/animal_welfare/index.shtml (updated Apr. 29, 2010) (accessed Apr. 2, 2011); see also Durbin, *supra* n. 53 (explaining the regulations).

⁵⁸ 7 U.S.C. §§ 2133, 2143 (2006).

⁵⁹ U.S. Dept. of Agric, *Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers 1* (May 2010) (available at <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf> (accessed Apr. 2, 2011)).

⁶⁰ *Id.* at 2; 9 C.F.R. § 2.1(a)(3)(vii) (2004).

⁶¹ ASPCA, *supra* n. 53.

lation aimed at closing the Internet sales loophole.⁶² The Puppy Uniform Protection and Safety Act (PUPS) (Sen. 3424/H.R. 5434) would amend the AWA to require licensing and inspection of “high volume retail breeders” who own one or more breeding female dogs and sell more than fifty dogs per year directly to the public, regardless of whether the sales are made online.⁶³ It would also require commercial breeding facilities to provide their dogs with appropriate space and the opportunity for daily exercise.⁶⁴

Members of the dog breeding industry raise a number of concerns with the PUPS bill.⁶⁵ For example, they claim that the definition of “high volume retail breeder” is overly broad and fails to consider co- and joint ownership.⁶⁶ They also worry that the inclusion of four-month-old dogs in the definition of “breeding female” could encourage premature spay procedures to avoid counting the dogs toward the numeric criteria for licensing.⁶⁷ They additionally argue that the “fifty sales” requirement is problematic because it could include public animal control facilities, veterinary clinics with adoption centers, and non-profit rescue groups.⁶⁸ Some opponents of the bill further claim that it would eliminate many good sources of home-bred puppies and close down rescue efforts.⁶⁹

Proponents of the bill counter that the legislation is crafted to cover only large commercial dog breeding facilities.⁷⁰ They argue that it would not impact small breeders who sell fewer than fifty dogs per year.⁷¹ They believe that the bill is necessary to curb the worst abuses in the puppy mill industry and protect dogs in mass breeding facilities from harm.⁷²

In May 2010, the Senate version of PUPS was referred to the Committee on Agriculture, Nutrition, and Forestry.⁷³ In June, the House version was referred to the Subcommittee on Livestock, Dairy,

⁶² Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* “s 3424,” *select* All Information (accessed Apr. 2, 2011) [hereinafter Sen. 3424 Summary]; Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* “hr 5434,” *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 5434 Summary].

⁶³ Sen. 3424, 111th Cong. § 2(p)(1)(B)(ii) (May 25, 2010).

⁶⁴ *Id.* at § 2(c) (amendment to 7 U.S.C. § 2143(3)(j)).

⁶⁵ Am. Kennel Club, *Federal PUPS Legislation Information Update*, http://www.akc.org/news/index.cfm?article_id=4163 (July 23, 2010) (accessed Apr. 2, 2011).

⁶⁶ *Id.*

⁶⁷ Sportsmen’s & Animal Owners’ Voting Alliance, *Puppy Uniform Protection & Safety Act (PUPS) 2010*, <http://saova.org/PUPS2010.html> (July 5, 2010) (accessed Apr. 2, 2011).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Abusive Puppy Mills, *supra* n. 54.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Sen. 3424 Summary, *supra* n. 62.

and Poultry.⁷⁴ No further action was taken on either bill. Similar bills were introduced in the 2007 and 2008 congressional sessions, but they too died in committee.⁷⁵

D. Prevention of Farm Animal Cruelty

No federal laws currently address the conditions in which farmed animals are raised.⁷⁶ However, Representative Diane E. Watson (D-Cal.) introduced H.R. 4733, the Prevention of Farm Animal Cruelty Act in March 2010.⁷⁷ H.R. 4733 declares it U.S. policy that “the raising of livestock for food production shall be consistent with the basic principles of animal welfare.”⁷⁸ To this end, the bill prohibits a federal agency from purchasing any food product derived from pregnant pigs, veal calves, or egg-laying hens unless the animal was raised with adequate space to “stand up, lie down, and turn around freely” and to “fully extend all limbs.”⁷⁹ As the federal government spends more than \$1 billion per year on animal products for various federal programs—including the National School Lunch Program—the bill would have a significant impact on industrial farming operations that raise millions of animals in extreme confinement.⁸⁰

Proponents of the bill argue that the measure allows the federal government to lead by example on farm animal welfare.⁸¹ They view the standard practice of housing calves in veal crates, sows in gestation crates, and hens in battery cages, as inhumane.⁸² Such practices

⁷⁴ H.R. 5434 Summary, *supra* n. 62.

⁷⁵ Lib. Cong., THOMAS, *Search Bill Summary and Status 110th Congress*, <http://www.thomas.gov/bss/110search.html>; *select* Bill Number, *search* “hr 6949,” *select* All Information (accessed Apr. 2, 2011); Lib. Cong., THOMAS, *Search Bill Summary and Status 110th Congress*, <http://www.thomas.gov/bss/110search.html>; *select* Bill Number, *search* “s 3519,” *select* All Information (accessed Apr. 2, 2011).

⁷⁶ Animal Leg. Def. Fund, *Farmed Animals and the Law*, <http://www.aldf.org/article.php?id=1027> (accessed Apr. 2, 2011) (the Animal Welfare Act does not apply to animals raised for food or fiber; the Humane Methods of Livestock Slaughter Act only governs the handling of livestock prior to slaughter; the Twenty Eight Hour Law only applies to animal confinement during transport); *see also* Tadlock Cowan, *Humane Treatment of Farm Animals: Overview and Issues* 1 (Cong. Research Serv. Sept. 13, 2010) (discussing laws, including the Animal Welfare Act, the Humane Methods of Slaughter Act, and the Twenty Eight Hour Law, regarding animal agricultural practices).

⁷⁷ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/home/LegislativeData.php?&n=BSS&c=111>; *select* Bill Number, *search* “hr 4733,” *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 4733 Summary].

⁷⁸ H.R. 4733, 111th Cong. § 2(b) (Mar. 2, 2010).

⁷⁹ H.R. 4733 at § 3 (b)(1)–(2).

⁸⁰ Humane Socy. of the U.S., *Federal Bill Aims to Allow the Government to Lead by Example on Farm Animal Welfare*, http://www.humanesociety.org/news/press_releases/2010/03/federal_procurement_03042010.html (Mar. 4, 2010) (accessed Apr. 2, 2011) [hereinafter *Lead by Example*].

⁸¹ *Id.*

⁸² *See id.* (discussing confinement methods of animals raised for food); *see also* Farm Sanctuary, *Support the Prevention of Farm Animal Cruelty Act*, <https://secure2.convio>.

confine the animals in spaces barely larger than their own bodies for almost their entire lives.⁸³ Those who favor the bill claim that its requirements are modest and reasonable and that the public supports moving away from factory farming practices.⁸⁴ As evidence, they point to states that have passed laws to phase out the most extreme confinement of farm animals, as well as the growing trend in many restaurants and supermarket chains to refuse products from producers who use such methods.⁸⁵

Opponents in the farming industry maintain that farmers understand their animals' welfare needs and address them adequately.⁸⁶ They argue that H.R. 4733 mandates arbitrary animal production standards, designed without input from veterinarians or animal producers.⁸⁷ They further claim that farmers already abide by industry-developed animal welfare standards, defending current confinement practices as necessary to maintain healthy livestock.⁸⁸

In June 2010, H.R. 4733 was referred to the House Subcommittee on Livestock, Dairy, and Poultry.⁸⁹ Much like a similar bill introduced in the 110th Congress, H.R. 4733 never made it out of the Subcommittee.⁹⁰

E. Compound 1080 and Sodium Cyanide Elimination Act

For years, the USDA's Wildlife Services program has used the poisons sodium fluoroacetate and sodium cyanide to kill coyotes, foxes, and other wild animals perceived as threats to livestock.⁹¹ Sodium fluoroacetate, commonly known as Compound 1080, is used in livestock protection collars (LPCs) that are strapped around the necks of sheep and goats, spilling the poison when punctured by a predator's teeth.⁹² Sodium cyanide is used in M-44 ejector devices treated with a canine-attracting scent that deliver the poison directly into the

net/fsi/site/Advocacy?cmd=display&page=UserAction&id=332 (accessed Apr. 2, 2011) (most Americans oppose the use of battery cages, gestation crates, and veal crates).

⁸³ *Lead by Example*, *supra* n. 80.

⁸⁴ *See id.* (Americans are demanding a move away from abusive confinement; the legislation would meaningfully improve the lives of animals raised for food); *see* Farm Sanctuary, *supra* n. 82 (the legislation is modest but would affect the lives of millions of animals).

⁸⁵ *Lead by Example*, *supra* n. 80.

⁸⁶ *See* Cowan, *supra* n. 77, at 2 (summarizing farmers' views).

⁸⁷ *See* Mike Barnett, *Who Makes Texas Animal Cruelty Laws for Livestock?*, <http://www.txfb.org/TxAgTalks/?tag=/HR+4733> (Mar. 15, 2010) (accessed Apr. 2, 2011) (discussing H.R. 4733).

⁸⁸ *Id.*

⁸⁹ H.R. 4733 Summary, *supra* n. 77.

⁹⁰ *Id.*; Lib. Cong., THOMAS, *Search Bill Summary and Status 110th Congress*, <http://www.thomas.gov/bss/110search.html>; *select* Bill Number, *search* "hr 1726," *select* All Information (accessed Apr. 2, 2011).

⁹¹ Camilla H. Fox, *Project Coyote, Action Alert: Ban Dangerous Poisons*, <http://www.projectcoyote.org/action/actionpoisons.html> (accessed Apr. 2, 2011).

⁹² *Id.*

predator's mouth when the predator pulls on the device.⁹³ In 2008, the two substances together killed nearly 13,000 animals.⁹⁴

The U.S. Environmental Protection Agency (EPA) classifies both poisons as acutely toxic pesticides.⁹⁵ After banning them in 1972 due to the incidence of human injury and accidental killing of non-target species, the EPA reinstated the use of M-44s in 1975 and granted registration of Compound 1080 for use in LPCs in 1985.⁹⁶ Both poisons are "restricted use pesticides," meaning that only trained, certified applicators may use them under the direct supervision of a government agency.⁹⁷ In addition, the chemicals may only be used in certain areas to avoid poisoning threatened and endangered species.⁹⁸ Despite these restrictions, California and Washington banned M-44s and Compound 1080 in 1998 and 2000 respectively.⁹⁹

Those who oppose the use of M-44s and Compound 1080 condemn them as "cruel, indiscriminate, and dangerous."¹⁰⁰ They argue that the poisons often cause the animals a painful death that allows them to suffer for hours.¹⁰¹ They also claim that the substances kill numerous "non-target species," including bears, deer, eagles, and pet dogs.¹⁰² They point to a wide variety of effective alternatives to the lethal predator control devices, including predator-proof fencing, guard animals, human presence, and sound and light devices.¹⁰³ Furthermore, they warn that the widespread distribution of Compound 1080 and sodium cyanide increases the potential use of the poisons in bioterror-

⁹³ Predator Defense, *Two Killers That Need To Go* 2, http://www.predatordefense.org/docs/FactSheet_Two_Killers_final_04-01-10.pdf (updated Apr. 2010) (accessed Apr. 2, 2011).

⁹⁴ Fox, *supra* n. 91.

⁹⁵ EPA, *R.E.D. Facts, Sodium Cyanide* 2, <http://www.epa.gov/oppsrrd1/REDs/factsheets/3086fact.pdf> (Sept. 1994) (accessed Apr. 2, 2011) [hereinafter EPA, *Sodium Cyanide*]; EPA, *R.E.D. Facts, Sodium Fluoroacetate* 3, <http://www.epa.gov/oppsrrd1/REDs/factsheets/3073fact.pdf> (updated June 1995) (accessed Apr. 2, 2011) [hereinafter EPA, *Sodium Fluoroacetate*].

⁹⁶ EPA, *Sodium Cyanide*, *supra* n. 95, at 2; EPA, *Sodium Fluoroacetate*, *supra* n. 95, at 2.

⁹⁷ EPA, *Sodium Cyanide*, *supra* n. 95, at 1; EPA, *Sodium Fluoroacetate*, *supra* n. 95, at 1-2.

⁹⁸ EPA, *Sodium Cyanide*, *supra* n. 95, at 1; EPA, *Sodium Fluoroacetate*, *supra* n. 95, at 1-2.

⁹⁹ Animal Leg. & Historical Ctr., Mich. St. U. College of L., *California Trapping Initiative*, <http://www.animallaw.info/statutes/stusca1998proposition4.htm> (accessed Apr. 2, 2011); Animal Leg. & Historical Ctr., Mich. St. U. College of L., *Washington Initiative 713 (Anti-Leghold Trap)*, <http://www.animallaw.info/statutes/stuswa2000initiative713.htm> (accessed Apr. 2, 2011).

¹⁰⁰ Fox, *supra* n. 91.

¹⁰¹ Predator Defense, *supra* n. 93, at 1-2.

¹⁰² *Id.* at 2-4.

¹⁰³ *Id.* at 3.

ism.¹⁰⁴ The EPA maintains, however, that all of these fears are unfounded, unpersuasive, and lacking in support.¹⁰⁵

In response to continued concerns over the poisons, Representative Peter A. DeFazio (D-Or.) introduced H.R. 5643, the Compound 1080 and Sodium Cyanide Elimination Act in June 2010. H.R. 5643 would amend the Toxic Substances Control Act to “prohibit the use, production, sale, importation, or exportation” of the two pesticides for predator control.¹⁰⁶ The bill subjects violators of either prohibition to a fine, imprisonment of not more than two years, or both.¹⁰⁷ H.R. 5643 was referred to both the Committee on Energy and Commerce and the Judiciary Committee for consideration of the provisions that fall within their expertise.¹⁰⁸ No further action was taken on the bill. However, in September 2010, the EPA opened up the fifteen-year registration review for both poisons to determine whether they pose any new risks.¹⁰⁹

F. Migratory Bird Treaty Act Penalties

Originally enacted in 1918, the Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds.¹¹⁰ The MBTA established criminal penalties for certain illegal activities including the pursuit, hunting, taking, capturing, and killing of many native bird species.¹¹¹ In most instances, the punishment for these offenses is a misdemeanor limited to a maximum of six months in jail, up to a \$15,000 fine, or both.¹¹²

In 2007, special agents of the U. S. Fish and Wildlife Service (FWS) arrested several members of “roller pigeon clubs”¹¹³ in connection with a fourteen-month-long nationwide undercover investigation

¹⁰⁴ *Id.*

¹⁰⁵ See Debra Edwards, *Analysis of the Role of M-44 Device and Compound 1080 Livestock Protection Collars in Predator Management*, 48–50 (EPA, Jan. 16, 2009) (available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2007-0944-0864> (accessed Apr. 2, 2011)) (responding to a petition to ban Compound 1080 and M-44s).

¹⁰⁶ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; select Bill Number, search “hr 5643,” select All Information (accessed Apr. 2, 2011) [hereinafter H.R. 5643 Summary]; H.R. 5643, 111th Cong. (June 30, 2010).

¹⁰⁷ H.R. 5643, 111th Cong. at § 2.

¹⁰⁸ H.R. 5643 Summary, *supra* n. 106.

¹⁰⁹ Edwards, *supra* n. 105, at 49.

¹¹⁰ 16 U.S.C. § 703(a) (2004); see also U.S. Fish & Wildlife Serv. (FWS), *Migratory Birds and Habitat Programs*, <http://www.fws.gov/pacific/migratorybirds/mbta.htm> (accessed Apr. 2, 2011) (summarizing the Migratory Bird Treaty).

¹¹¹ 16 U.S.C. §§ 707, 703(a)–(b) (2004).

¹¹² 16 U.S.C. § 707(a).

¹¹³ Roller pigeon clubs are clubs that promote and compete with roller pigeons, birds that have a genetic defect that causes them to flip backward during flight. Enthusiasts breed the pigeons to get a group of birds that roll simultaneously and recover before hitting the ground. However, the in-flight flipping makes the pigeons easy prey for raptors. U.S. Atty. Off., C. Dist. of Cal., *Seven Roller Pigeon Enthusiasts Charged with*

into the killing of MBTA protected birds.¹¹⁴ The investigation revealed that the pigeon hobbyists had killed thousands of hawks and peregrine falcons in retaliation for the raptors preying upon their prized pets.¹¹⁵ Although they were tried and convicted for violations of the MBTA, none of the defendants received jail time or fines approaching the maximum level.¹¹⁶ This was despite the fact that they used inhumane methods to kill the birds, including trapping, poisoning, gassing, suffocating, and clubbing them to death, and then bragged about it on the Internet.¹¹⁷

In response to this case, Representative DeFazio introduced H.R. 2062 in April 2009 to provide FWS with “a law enforcement tool that would allow the agency to prosecute the most egregious violations of the MBTA with serious penalties.”¹¹⁸ The bill, entitled the Migratory Bird Treaty Penalty and Enforcement Act of 2009, would amend the MBTA to apply harsher penalties to violators who kill or wound a migratory bird in an aggravated manner.¹¹⁹ “Aggravated manner” means deliberately and in a manner that . . . (A) demonstrates indifference to the pain and suffering of the bird; or . . . (B) involves actions that would shock a reasonable person.”¹²⁰ A first offense under this new standard could result in a fine of up to \$100,000 under Title 18 of the U.S. Code, imprisonment of up to one year, or both.¹²¹ A second violation could result in a fine of up to \$250,000, imprisonment of up to two years, or both.¹²²

Bird conservationists and champions of the bill argue that its provisions are necessary to send the message that Congress takes wildlife crimes seriously and expects courts to apply penalties comparable to the shocking nature of the crime.¹²³ They claim that the existing MBTA fines are insufficient to prevent illegal activity.¹²⁴

Those who oppose H.R. 2062 contend that the penalties are overly harsh and the language is vague.¹²⁵ They claim that the bill imposes punishments unprecedented in severity that do not fit the crime.¹²⁶ They worry that the definition of “aggravated manner” is too subjective

Killing, or Helping to Kill, Protected Hawks and Falcons, <http://www.justice.gov/usao/cac/pressroom/pr2007/070.html> (May 24, 2007) (accessed Apr. 2, 2011).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*; 155 Cong. Rec. at H13533 (daily ed. Dec. 7, 2009).

¹¹⁸ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* “hr 2062,” *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 2062 Summary]; 155 Cong. Rec. at H13533.

¹¹⁹ H.R. 2062, 111th Cong. § 2(d)(1) (Dec. 17, 2010).

¹²⁰ H.R. 2062, 111th Cong. at § 2(d)(3); Sen. Rpt. 111-375 at 3–4 (Dec. 17, 2010).

¹²¹ Sen. Rpt. 111-375 at 2.

¹²² *Id.*

¹²³ 155 Cong. Rec. at H13533.

¹²⁴ H.R. Rpt. 111-355 at 3 (Dec. 7, 2009).

¹²⁵ Sen. Rpt. 111-375 at 6.

¹²⁶ *Id.*

and does not clearly specify what threshold of behavior triggers the penalty.¹²⁷

In November 2009, Senator Jeff Merkley (D-Or.) introduced companion legislation to H.R. 2062 in the Senate.¹²⁸ The monetary penalties in Sen. 2811 were lower and the language of the bill varied slightly from the House version.¹²⁹ While Sen. 2811 was referred to the Committee on Environment and Public Works and remained there, H.R. 2062 passed the House in December 2009.¹³⁰ In December 2010, H.R. 2062 was placed on the Senate Legislative Calendar under General Orders, but no further action was taken before the end of the congressional session.¹³¹

G. Importation and Possession of Non-native Snakes

Numerous large non-native constrictor snakes currently populate Everglades National Park and other parts of southern Florida.¹³² Many of the snakes, which include Burmese pythons, boas, and anacondas, were originally imported into Florida for sale as pets and then intentionally released into the wild by their owners when the snakes grew too large to handle.¹³³ Some also escaped into the Everglades in 1992 when Hurricane Andrew destroyed a reptile breeding facility.¹³⁴ Experts now estimate the number of wild Burmese pythons in the area to be in the tens of thousands.¹³⁵ The pythons, which can grow up to 23 feet long and weigh up to 200 pounds, have become a dominant predator in the Everglades environment, threatening the survival of many endangered species and other wildlife.¹³⁶

In 2009, the U.S. Geological Survey (USGS) released a risk assessment report on nine species of giant constrictor snakes that are considered invasive or potentially invasive in the U.S.¹³⁷ The report determined that all of the snakes posed a medium or high risk to the health of native Florida ecosystems.¹³⁸ In addition, climate range projections showed that much of the southern U.S. could also be at risk of invasion in the future.¹³⁹ The report further noted that no sufficient

¹²⁷ *Id.*

¹²⁸ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "s 2811," *select* All Information (accessed Apr. 2, 2011) [hereinafter Sen. 2811 Summary].

¹²⁹ Sen. 2881, 111th Cong. (Nov. 20, 2009).

¹³⁰ Sen. 2811 Summary, *supra* n. 128; H.R. 2062 Summary, *supra* n. 118.

¹³¹ H.R. 2062 Summary, *supra* n. 118.

¹³² See H.R. Rpt. 111-693 at 2 (Dec. 21, 2010) (providing background on pythons in the Everglades).

¹³³ *Id.* at 2-3.

¹³⁴ *Id.* at 2.

¹³⁵ *Id.*

¹³⁶ *Id.*; 155 Cong. Rec. S1438 (daily ed. Feb. 3, 2009).

¹³⁷ Sen. Rpt. 111-180 at 1-2 (May 5, 2010).

¹³⁸ *Id.*

¹³⁹ H.R. Rpt 111-693 at 4; 155 Cong. Rec. S1438.

mechanism currently exists for removing a giant snake population that has established itself over a large area.¹⁴⁰

Concerned about the damage the snakes were doing to the environment in his home state, Senator Bill Nelson (D-Fla.) introduced Sen. 373 in February 2009.¹⁴¹ Sen. 373 would amend the Lacey Act to add the nine snakes covered in the USGS report to the list of injurious species found in 18 U.S.C. § 42(a)(1).¹⁴² The Lacey Act bans the importation, transport, and interstate trade of species listed as injurious to humans, agriculture, forestry, horticulture, or wildlife.¹⁴³ It allows permit exceptions for zoological, educational, medical, and scientific purposes, as well as importation by Federal agencies.¹⁴⁴ In June 2009, Representative Kendrick B. Meek (D-Fla.) introduced H.R. 2811, a similar bill that would add only two of the snake species to the Lacey Act list.¹⁴⁵

The bills' proponents argue that banning the sale of the snakes in interstate commerce is necessary to reduce the number released into the wild by irresponsible pet owners.¹⁴⁶ They urge Congress to take quick action to ensure that the invasive snakes do not further destroy the fragile Everglades ecosystem and spread to other areas.¹⁴⁷ They also claim that the snakes pose a danger to humans, pointing to four python-related deaths since 2006.¹⁴⁸ In addition, they note that although a Lacey Act listing may impact the exotic snake industry as a whole, it would not affect the existing possession or sale of snakes within a state.¹⁴⁹

Snake owners and breeders argue that the proposed snake ban is based on poor scientific evaluation of the issues.¹⁵⁰ As evidence for their claims, they rely on a study by biologists at the City University of New York that shows the snakes are unlikely to expand their range

¹⁴⁰ H.R. Rpt 111-693 at 3.

¹⁴¹ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "s 373," *select* All Information (accessed Apr. 2, 2011) [hereinafter Sen. 373 Summary].

¹⁴² See 155 Cong. Rec. at S1438 (providing Senator Nelson's testimony on Sen. 373); Sen. Rpt 111-180 at 1 (explaining the bill).

¹⁴³ 18 U.S.C. § 42(a)(1) (2006).

¹⁴⁴ *Id.* at § 42(a)(3).

¹⁴⁵ Lib. Cong., THOMAS, *Search Bill Summary and Status 111th Congress*, <http://thomas.loc.gov/bss/111search.html>; *select* Bill Number, *search* "hr 2811," *select* All Information (accessed Apr. 2, 2011) [hereinafter H.R. 2811 Summary].

¹⁴⁶ See 155 Cong. Rec. at S1438 (testimony providing reasons for the bill).

¹⁴⁷ *Id.*

¹⁴⁸ See Humane Socy. of the U.S., *Senate Panel Approves Large Constrictor Snake Trade Ban*, http://www.humanesociety.org/news/press_releases/2009/12/constrictor_snake_bill_senate_panel_121009.html (Dec. 10, 2009) (accessed Apr. 2, 2011) (providing information on the snake ban).

¹⁴⁹ *Id.*

¹⁵⁰ Leslie Kaufman, *Snake Owners See Furry Bias in Invasive Species Proposal*, N.Y. Times A17 (Jan. 9, 2011) (available at <http://www.nytimes.com/2011/01/09/science/earth/09snakes.html> (Jan. 8, 2011) (accessed Apr. 2, 2011)).

beyond Florida and areas in South Texas.¹⁵¹ Opponents of the snake ban further argue that passage of a bill would circumvent the established process for listing an injurious species under the Lacey Act.¹⁵² Such a process traditionally consists of FWS performing a risk analysis on the proposed species, followed by a notice and comment period in which the public responds to the Service's findings.¹⁵³ Opponents also believe the snake ban would result in mass snake release and euthanasia because pet owners would no longer be able to rehome their snakes through sale or trade across state lines or take their snakes with them when they moved to another state.¹⁵⁴ In addition, opponents claim the ban would increase unemployment by putting thousands of people in the snake industry out of work.¹⁵⁵

In March 2010, under pressure from public officials to ban the animals, FWS opened up the public comment period for a proposed rule to list giant constrictor snakes as injurious wildlife under the Lacey Act.¹⁵⁶ It was the first time the agency attempted to list animals so widely held as pets.¹⁵⁷ The final comment period closed in August 2010, and the Service has yet to issue a final rule on the listing.¹⁵⁸

In May 2010, Sen. 373 was placed on the Senate Legislative Calendar under General Orders.¹⁵⁹ In December 2010, H.R. 2811 was placed on the Union Calendar.¹⁶⁰ No further action was taken on either bill.

II. STATE LEGISLATION

This Part discusses legislation considered or passed by state legislatures in 2010. The selected legislation is just a small portion of the hundreds of animal-related bills that touched on topics ranging from wildlife protection to stray livestock to disputes over barking dogs.¹⁶¹ Many state legislatures assign bill numbers over a two-year period and automatically reintroduce legislation in the second year of the bien-

¹⁵¹ *Id.*

¹⁵² Pet Indus. Jt. Advisory Council, *Congressional Python Ban: Companion Bills Propose to Ban Pythons under the Lacey Act*, <http://www.pijac.org/governmentaffairs/s373forum.asp> (accessed Apr. 2, 2011).

¹⁵³ *Id.*

¹⁵⁴ Pet Indus. Jt. Advisory Council, *Pet Alert, Florida's Senator Nelson Proposes Congressional Ban of All Pythons under the Lacey Act*, http://www.pijac.org/_documents/us_sb_373.pdf (Feb 17, 2009) (accessed Apr. 2, 2011).

¹⁵⁵ *Id.*

¹⁵⁶ 75 Fed. Reg. 11808 (Mar. 12, 2010).

¹⁵⁷ Kaufman, *supra* n. 150.

¹⁵⁸ FWS, *Public Comment Period for Proposed Rule to List Giant Constrictor Snakes as Injurious Wildlife Now Closed*, <http://www.fws.gov/verobeach/index.cfm?method=activityhighlights&id=11> (July 1, 2010) (accessed Apr. 2, 2011).

¹⁵⁹ Sen. 373 Summary, *supra* n. 141.

¹⁶⁰ H.R. 2811 Summary, *supra* n. 145.

¹⁶¹ See Am. Veterinary Med. Assn., *Legislative Report*, <http://www.cqstatetrack.com/taxis/viewrpt?report=4d0b996c1453&sid=> (accessed Apr. 2, 2011) (tracking 1,859 animal-related bills introduced in state legislatures within the past two years).

nium. The analysis below focuses on bills that were first introduced in 2010 or received significant legislative action in 2010.

A. *Importation and Possession of Non-native Snakes*

As discussed in Part I of this Article, Florida has struggled to control invasive non-native snake populations.¹⁶² Burmese pythons, in particular, have established breeding grounds in the Everglades, prompting concern that the snakes will adversely impact native wildlife populations and threaten public safety.¹⁶³ The issue received further attention in 2009 when an 8-foot-long Burmese python escaped from its cage in a central Florida home and strangled a 2-year-old girl in a neighboring bedroom.¹⁶⁴ Florida lawmakers responded by passing Senate Bill 318, a bill broadly prohibiting possession of several species of non-native reptiles, including five subspecies of pythons, the Green Anaconda, and the Nile Monitor.¹⁶⁵ The bill revised a 2007 statute that required a license to possess a reptile designated by the Florida Fish and Wildlife Conservation Commission as a “reptile of concern.”¹⁶⁶ The new measure grandfathered in previous licensees but declares that no person or corporation may “keep, possess, import into the state, sell, barter, trade, or breed” any prohibited species of reptile.¹⁶⁷ Prior to passage, Senate Bill 318 was amended to incorporate the language of Senate Bill 572, which proposed increased penalties for importing prohibited non-native species.¹⁶⁸ Despite the seriousness of their concerns, legislators used lighthearted tactics to support Senate Bill 318, handing out toy snakes and hissing “yes” in support of the

¹⁶² For a discussion of federal attempts to control non-native snake species, consult *supra* pt. I(G).

¹⁶³ Patrik Jonsson, *Overrun with Snakes, Florida Looks to Bounty Hunters*, 101-A Christian Sci. Monitor 20, 21 (July 9, 2009) (available at <http://www.csmonitor.com/Environment/Wildlife/2009/0709/overrun-with-snakes-florida-looks-to-bounty-hunters> (accessed Apr. 2, 2011)).

¹⁶⁴ Associated Press, *Escaped Pet Python Strangles 2-Year-Old Girl*, <http://www.katu.com/news/national/49695007.html> (July 2, 2009) (accessed Apr. 2, 2011).

¹⁶⁵ See Fla. H., *CS/SB 318 – Wildlife Regulation [EPSC]*, <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=42380> (Mar. 1, 2011) (Senate Bill 318 passed on April 28, 2010); Fla. Sen. 318, 2010 Legis., 42d Reg. Sess. § 2(1)(a)–(b), (2)(a) (Apr. 28, 2010) (available at <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=42380>; *select* Enrolled (accessed Apr. 2, 2011)).

¹⁶⁶ Fla. Sen. Bill Analysis & Fiscal Impact State., *SB 318*, 2010 Legis., 42d Reg. Sess. 1, 4 (Feb. 16, 2010).

¹⁶⁷ Fla. Sen. 318, 2010 Legis., 42d Reg. Sess. at § 2(2)(a)–(b).

¹⁶⁸ Fla. Sen. Bill Analysis & Fiscal Impact State., *CS/SB 318 & 572*, 2010 Legis., 42d Reg. Sess. 3-4 (Apr. 14, 2010); Fla. Sen. 572, 2010 Legis., 42d Reg. Sess. 4 (Apr. 12, 2010) (available at <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=42558&SessionIndex=-1&SessionId=64&BillText=&BillNumber=572&BillSponsorIndex=0&BillListIndex=0&BillStatuteText=&BillTypeIndex=0&BillReferredIndex=0&HouseChamber=S&BillSearchIndex=0>; *select* Committee Substitute 1 (accessed Apr. 2, 2011)).

bill in committee.¹⁶⁹ The bill passed both chambers unanimously before receiving the governor's signature on June 3, 2010.¹⁷⁰

Several other states also considered bills restricting ownership of exotic snakes. While surfing the Internet, Georgia State Senator John Douglas discovered the story of a Florida toddler killed by her family's pet python.¹⁷¹ He subsequently introduced Senate Bill 303, which required owners of pythons and anacondas to apply for a "wild animal license" and to implant microchips in such snakes 2 inches or more in diameter.¹⁷² The bill died in committee on a tie vote after the motioning senator noted that the bill would not have saved the girl in Florida because she was killed by a snake that was unlicensed in contravention of existing Florida law.¹⁷³ In Louisiana, legislators passed a bill requiring permits for private possession of all venomous snakes and constrictor snakes in excess of 8 feet in length.¹⁷⁴ The bill also requires licenses for wholesalers or dealers of non-native snakes and authorizes the Louisiana Wildlife and Fisheries Commission to adopt rules on the "harvest, possession, sale, handling, housing, or importation [of] constrictors and poisonous snakes."¹⁷⁵ Legislators in Arizona, Rhode Island, and South Carolina likewise introduced bills that would have placed restrictions on the possession of non-native snakes and other reptiles.¹⁷⁶ The bill in Rhode Island was withdrawn by its sponsor after the Department of Environmental Management, which originally

¹⁶⁹ Robert Samuels, Miami Herald, *State Poised to Ban the Sale of Burmese Pythons*, <http://www.miamiherald.com/2010/04/29/1603455/state-poised-to-ban-the-sale-of.html> (Apr. 29, 2010) (accessed Apr. 2, 2011).

¹⁷⁰ Fla. Sen., *Senate 0318: Relating to Wildlife Regulation [EPSC]*, http://archive.fl.senate.gov/Session/select_2010_search_318 (accessed Apr. 2, 2011).

¹⁷¹ Ga. Sen. 2010 Meeting Minutes, *Senate Natural Resources & the Environment Committee*, 150th Gen. Assembly, 2009–2010 Reg. Sess. (Feb. 1, 2010) (available at <http://www.senate.ga.gov/committees/Documents/2010Minutes139.pdf> (accessed Apr. 2, 2011)).

¹⁷² Ga. Sen. 303, 150th Gen. Assembly, 2009–2010 Reg. Sess. § 1 (Jan. 12, 2010) (available at <http://www.legis.ga.gov/Legislation/en-US/display.aspx?Legislation=28974> (accessed Apr. 2, 2011)).

¹⁷³ Ga. Sen. 2010 Meeting Minutes, *Senate Natural Resources & the Environment Committee*, 150th Gen. Assembly, 2009–2010 Reg. Sess. 3 (Feb. 8, 2010) (available at <http://www.senate.ga.gov/committees/Documents/2010Minutes139.pdf> (accessed Apr. 2, 2011)).

¹⁷⁴ La. H. 1354, 36th Legis., 2010 Reg. Sess. 2 (June 16, 2010) (available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=722766> (accessed Apr. 2, 2011)) (as enrolled); La. St. Legis., *HB's Amended by Senate to be Concur*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=717520> (accessed Apr. 2, 2011) (House roll call tally for House Bill 1354 final passage); La. St. Legis., *HB 3rd & Final Ordered Subj to Call*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=715074> (accessed Apr. 2, 2011) (Senate roll call tally for House Bill 1354 final passage).

¹⁷⁵ La. H. 1354, 36th Legis., 2010 Reg. Sess. at 2.

¹⁷⁶ Ariz. H. 2375, 49th Legis., 2d Reg. Sess. § 4 (Jan. 19, 2010) (available at http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2375&Session_Id=93 (accessed Apr. 2, 2011)); R.I. Sen. 2027, Jan. Sess. 2010 § 1 (Jan. 13, 2010) (available at <http://www.rilin.state.ri.us/billtext10/senatetext10/s2027.pdf> (accessed Apr. 2, 2011)); S.C. H. 4218, 118th Gen. Assembly, 2009–2010 Sess. § 1 (Jan. 12, 2010) (available at http://www.scstatehouse.gov/sess118_2009-2010/bills/4218.htm (accessed Apr. 2, 2011)).

encouraged the introduction of the bill, opted instead to pursue an administrative rule change requiring permits for invasive reptiles.¹⁷⁷

B. Livestock Care Standards

Polls show that nearly two-thirds of Americans support strict laws regulating the treatment of farm animals.¹⁷⁸ This support corresponds to continued media attention on industrial livestock operations.¹⁷⁹ Animal welfare advocates have capitalized on the public's concern by sponsoring ballot initiatives to improve the care of livestock.¹⁸⁰ Voters in three states—Florida, Arizona, and California—passed such ballot initiatives in 2002, 2006, and 2008, respectively.¹⁸¹ Proponents of livestock care measures, especially The Humane Society of the United States (HSUS), have indicated plans to propose ballot initiatives elsewhere.¹⁸² This prospect prompted several state legislatures to preemptively propose legislation in 2010 creating state boards to regulate the care of livestock.¹⁸³

¹⁷⁷ See E-mail from Scott N. Marshall, St. Veterinarian, R.I. Dept. of Env'tl. Mgt., to Richard Myers, Law Student, Lewis & Clark L. Sch., *Quick Question about Senate Bill 2027 (2010 Session)* (Jan. 4, 2011, 8:23 a.m. EDT) (on file with *Animal Law*) (explaining that the bill was unnecessary in light of ongoing rulemaking); See also E-mail from John Tassoni, Sen., R.I. Sen., to Richard Myers, Law Student, Lewis & Clark L. Sch., *Quick Question about Senate Bill 2027* (Dec. 27, 2010, 1:40 p.m. EDT) (on file with *Animal Law*) (noting that the Department of Environmental Management influenced the introduction and withdrawal of the bill).

¹⁷⁸ Frank Newport, Gallup News Service, *Post-Derby Tragedy, 38% Support Banning Animal Racing*, <http://www.gallup.com/poll/107293/PostDerby-Tragedy-38-Support-Banning-Animal-Racing.aspx> (May 15, 2008) (accessed Apr. 2, 2011) (62% of respondents in 2003 and 64% of respondents in 2008 were in favor of “passing strict laws concerning the treatment of farm animals”).

¹⁷⁹ See *id.* (polls were taken the same week that video footage showing the maltreatment of cows in slaughterhouses made the news); Jerry L. Anderson, *Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement*, 4 *Stan. J. Animal L. & Policy* 1, 39–42 (2011) (noting that popular books have significantly affected public opinion on animal welfare issues generally and industrial livestock operations specifically).

¹⁸⁰ See Elizabeth R. Springsteen, *A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject*, 14 *Drake J. Agric. L.* 437, 463–64 (2009) (noting that proponents of the ballot initiatives have relied on public sympathy to raise money and garner votes).

¹⁸¹ *Id.* at 440, 442, 447.

¹⁸² *Id.* at 440.

¹⁸³ See e.g. Beef Mag., *Animal Welfare Groups Want to Change Your Production Practices*, <http://beefmagazine.com/organizations/1109-animal-welfare-wants-change-farms/> (Nov. 9, 2009) (accessed Apr. 2, 2011) (describing an initiative adopted in Ohio as a “proactive move by the Ohio livestock industry”); see also e.g. Janet Patton, Lexington Herald-Leader, *Livestock Care Bill has Underlying Purpose*, <http://www.kentucky.com/2010/03/08/1172181/proposed-board-meant-to-stymie.html> (Mar. 8, 2010) (accessed Apr. 2, 2011) (explaining that the Kentucky bill proposing a Livestock Care Standards Commission was a response to the “attacks against animal agriculture by some radical ‘animal rights’ groups”); see also e.g. Neb. Farmer, *Idaho, Missouri Take Preemptive Action Against HSUS*, <http://nebraskafarmer.com/story.aspx/idaho/missouri/take/preemptive/action/against/hsus/36347> (Mar. 16, 2010) (accessed Apr. 2, 2011) (explaining

In Ohio, lawmakers passed House Bill 414, implementing the Ohio Livestock Care Standards Board and setting terms for board members.¹⁸⁴ Ohio voters and the General Assembly passed a constitutional amendment in 2009 that created the Board and authorized it to adopt rules “governing the care and well-being of livestock.”¹⁸⁵ On the day the measure passed, HSUS vowed to place an initiative on the 2010 fall ballot banning certain livestock confinement practices.¹⁸⁶ Governor Ted Strickland ultimately brokered a deal in which HSUS agreed to suspend its signature campaign on the condition that the Ohio Livestock Care Standards Board phase out gestation crates for sows by 2015 and veal crates for calves by 2017.¹⁸⁷ The compromise also prohibits the construction of new battery cage egg farms.¹⁸⁸ Both sides claimed victory in reaching the agreement, with farmers calling it a “national model.”¹⁸⁹

In Kentucky, State Senator David Givens introduced a bill creating the Kentucky Livestock Care Standards Commission, a fourteen-member board composed of two university representatives, the state veterinarian, five commodity organization representatives, a citizen-at-large, and other members appointed by the governor.¹⁹⁰ As introduced, Senate Bill 105 charged the Commission with establishing “standards governing the care and well-being of on-farm livestock and poultry.”¹⁹¹ Significantly, the bill also prohibited local governments from adopting “any ordinance, resolution, rule, or regulation regarding on-farm livestock or poultry care that is more stringent than the standards established by [the Commission].”¹⁹² Both chambers of the Kentucky Legislature passed Senate Bill 105, but the bill died after the Senate refused to concur to a House floor amendment requiring a certi-

that bills to establish livestock care boards in Idaho and Missouri were a preemptive response to HSUS ballot initiatives).

¹⁸⁴ Ohio H. 414, 128th Gen. Assembly, 2009–2010 Reg. Sess. § 1 (Mar. 31, 2010) (available at http://www.legislature.state.oh.us/BillText128/128_HB_414_PS_Y.pdf (accessed Apr. 2, 2011)) (as enacted).

¹⁸⁵ Ohio Sen. Jt. Res. 6, 128th Gen. Assembly, 2009–2010 Reg. Sess. (June 18, 2009) (available at http://www.legislature.state.oh.us/ResolutionText128/128_SJR_6_EN_N.pdf (accessed Apr. 2, 2011)); see also Springsteen, *supra* n. 180 at 455–56 (describing the amendment).

¹⁸⁶ Springsteen, *supra* n. 180 at 456–57.

¹⁸⁷ Erik Eckholm, *Farmers and Activists Move Toward a Truce on Animals' Close Quarters*, N.Y. Times A18 (Aug. 1, 2010) (available at <http://www.nytimes.com/2010/08/12/us/12farm.html> (accessed Apr. 2, 2011)).

¹⁸⁸ *Id.*

¹⁸⁹ Tim White, *Animal Cruelty Will Not be on the Ohio Ballot in November*, <http://beefproducer.com/story.aspx/animal/cruelty/will/not/be/on/the/ballot/in/november/10/39698> (July 1, 2010) (accessed Apr. 2, 2011).

¹⁹⁰ Ky. Sen. 105, 2010 Reg. Sess. § 2 (Jan. 26, 2010) (available at <http://www.lrc.ky.gov/record/10RS/SB105.htm>, select SB 105 (accessed Apr. 2, 2011)).

¹⁹¹ *Id.*

¹⁹² *Id.* at § 4.

fied organic farmer on the Commission.¹⁹³ The Senate then amended an unrelated bill, House Bill 398,¹⁹⁴ to incorporate the language of Senate Bill 105 without the House floor amendment.¹⁹⁵ With the added language establishing the Kentucky Livestock Care Standards Commission, House Bill 398 passed the House by a vote of ninety-five to five.¹⁹⁶

State Representative Dennis Keene, who voted against the legislation,¹⁹⁷ explained in his legislative update that the bill “is designed to protect Kentucky agriculture from what some call ‘anti-agriculture’ animal rights organizations.”¹⁹⁸ The Lexington Herald-Leader echoed this assessment, stating that “to prevent the imposition of what they see as onerous animal care standards . . . farm groups have lobbied for preemptive legislation to assign the regulatory right to boards stacked with representatives of animal agriculture organizations.”¹⁹⁹ However, Senator Givens, who sponsored the bill and chairs the Senate Agricultural Committee, believes the Commission will “root out the bad actors.”²⁰⁰ He noted that “the vast majority of our Kentucky farmers . . . are already complying with virtually everything this commission will be producing.”²⁰¹

Alabama and Louisiana, like Kentucky above, opted to include home rule restrictions in legislation addressing livestock care standards.²⁰² Home rule is the state grant of authority that allows local governments to self-govern and regulate activities in their jurisdic-

¹⁹³ Ky. Legis., *SB105 10RS WWW Version*, <http://www.lrc.ky.gov/record/10RS/SB105.htm> (accessed Apr. 2, 2011) (status and history for Senate Bill 105); Ky. H. Floor Amend. 3, 2010 Reg. Sess. 1 (Mar. 24, 2010) (available at <http://www.lrc.ky.gov/record/10RS/SB105.htm>; *select* HFA 3 (accessed Apr. 2, 2011)) (House Floor Amendment 3, requiring a certified organic farmer on the Commission, was filed to the committee substitute and included in the version of Senate Bill 105 passed by the House).

¹⁹⁴ See Ky. Legis., *HB398 WWW Version*, <http://www.lrc.ky.gov/record/10RS/HB398.htm> (accessed Apr. 2, 2011) (describing the bill and the new sections creating the Livestock Care Standards Board); Ky. H. 398, 2010 Reg. Sess. (Feb. 8, 2010) (available at <http://www.lrc.ky.gov/record/10RS/HB398.htm>; *select* HB 398 (accessed Apr. 2, 2011)).

¹⁹⁵ Ky. H. 398, 2010 Reg. Sess. at § 7.

¹⁹⁶ Ky. H. 398, 2010 Reg. Sess. (Apr. 12, 2010) (as enacted); Ky. H. 398 Roll Call Vote, *Commonwealth of Kentucky House of Representatives*, 2010 Reg. Sess. (Apr. 1, 2010) (available at http://www.lrc.ky.gov/record/10RS/HB398/vote_history.pdf (accessed Apr. 2, 2011)).

¹⁹⁷ Ky. H. 398 Roll Call Vote, *supra* n. 196.

¹⁹⁸ St. Rep. Dennis Keene, *Legislative Update March 26, 2010*, <http://www.denniskeene.com/?p=325> (Mar. 30, 2010) (accessed Apr. 2, 2011).

¹⁹⁹ Patton, *supra* n. 183.

²⁰⁰ Tim Thornberry, Bus. Lexington, *Legislation Introduced to Start Animal Welfare Commission*, http://www.bizlex.com/Articles-c-2010-02-16-91434.113117_Legislation_Introduced_to_Start_Animal_Welfare_Commission.html (Feb. 16, 2010) (accessed Apr. 2, 2011).

²⁰¹ *Id.*

²⁰² Ala. H. 561, 2010 Reg. Sess. § 1(e) (Apr. 14, 2010) (as enrolled); La. Sen. 36, 36th Legis., 2010 Reg. Sess. 2 (Mar. 29, 2010) (available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=715424> (accessed Apr. 2, 2011)).

tion.²⁰³ Because home rule authority derives from the state, legislatures can generally restrict it with a simple statutory declaration of preemption.²⁰⁴ Alabama did just that with the passage of House Bill 561, a measure authorizing the Alabama State Board of Agriculture and Industries to adopt rules on “the care and handling of livestock and animal husbandry practices.”²⁰⁵ The bill reserves “the entire subject matter” to the state and prohibits all future local ordinances on the care of livestock.²⁰⁶ Louisiana passed an equally sweeping home rule restriction.²⁰⁷ Lawmakers there unanimously approved Senate Bill 36, which expanded the duties of the Louisiana Board of Animal Health to include setting “standards governing the care and well-being” of livestock.²⁰⁸ The bill contains an express limit on home rule:

No municipality, parish, local governmental entity or governing authority of any group or association, private or public, having jurisdiction over a specific geographic area shall enact ordinances, laws, subdivision restrictions or regulations establishing standards applicable to the care and well-being of bovine, equine, ovine, caprine, porcine, and poultry bred, kept, maintained, raised, or used for show, profit, or for the purpose of selling or otherwise producing crops, animals, or plant or animal products for market, except [with the approval of the Commissioner of Agriculture and Forestry].²⁰⁹

In both states, proponents of the legislation cited the need for regulation that would not unnecessarily hinder the agriculture industry.²¹⁰ Alabama’s Agriculture and Industries Commissioner said the legislation would also “help create uniformity in the care and protection of livestock.”²¹¹

Several other states enacted legislation on livestock care standards. In Vermont, lawmakers passed legislation establishing the Livestock Care Standards Board to develop “policy recommendations regarding the care, handling, and well-being of livestock in the state.”²¹² Similarly, West Virginia legislators created the Livestock

²⁰³ Christopher A. Novak, *Agriculture’s New Environmental Battleground: The Preemption of County Livestock Regulations*, 5 Drake J. Agric. L. 429, 447 (2000).

²⁰⁴ *Id.* at 444–45.

²⁰⁵ Ala. H. 561, 2010 Reg. Sess. at § 1(d).

²⁰⁶ *Id.* at § 1(d)–(e).

²⁰⁷ La. Sen. 36, 36th Legis., 2010 Reg. Sess. at 2.

²⁰⁸ *Id.* at 1; La. St. Legis., *SB’s Final Passage Regular Calendar*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=694921> (accessed Apr. 2, 2011).

²⁰⁹ La. Sen. 36, 36th Legis., 2010 Reg. Sess. at 2.

²¹⁰ ALFA Farmers Federation, *Senate Sends Livestock Care Bill to Governor* http://www.alfafarmers.org/leg_newsletter/index.phtml?id=3517 (Apr. 16, 2010) (accessed Apr. 2, 2011); Sen. Francis Thompson, Press Release, *Sen. Thompson Gains Senate Approval of Key Agriculture Industry Measures* (Apr. 20, 2010) (available at <http://senate.legis.state.la.us/Thompson/releases/2010/04-20-2010.pdf> (accessed Apr. 2, 2011)).

²¹¹ Press Release, Ala. Dept. of Agric. & Indus., *HB561, The Animal Industry Bill Signed By Governor* (Apr. 23, 2010) (available at http://www.agi.state.al.us/press_releases/2010apr2301?pn=2 (accessed Apr. 2, 2011)).

²¹² Vt. Sen. 295, 70th Biennial Sess. § 6 (June 3, 2010) (as enacted) (much of the language of Senate Bill 295 was originally introduced in House Bill 767).

Care Standards Board and authorized it to promulgate legislative rules.²¹³ Only one West Virginia lawmaker opposed the bill,²¹⁴ citing concern with the number of state boards.²¹⁵ Illinois, Indiana, and Utah expanded the duties of existing boards to include setting livestock care standards.²¹⁶ Idaho, Missouri, and Oklahoma considered but did not pass legislation creating livestock care standards boards.²¹⁷

A few states proposed banning certain livestock care practices outright. Lawmakers in New York and Rhode Island introduced bills establishing “prevention of farm animal cruelty” acts,²¹⁸ both of which limited confinement and tethering of livestock in a manner similar to California’s Proposition 2, which voters passed in 2008.²¹⁹ Tennessee legislators introduced several bills that would have affected treatment of livestock, including bills establishing food and shelter requirements,²²⁰ requiring law enforcement inspection of any reports of cruelty,²²¹ and making existing animal cruelty statutes applicable to

²¹³ W. Va. H. 4201, 79th Legis., 2d Sess. (Mar. 13, 2010) (available at http://www.legis.state.wv.us/bill_status/bills_text.cfm?billdoc=HB4201%20SUB%20ENR.htm&yr=2010&sesstype=RS&i=4201) (accessed Apr. 2, 2011) (as enrolled).

²¹⁴ W. Va. Sen. J., 79th Legis., 2d Sess. (Mar. 12, 2010) (available at http://www.legis.state.wv.us/Bulletin_Board/senate_journal.cfm?sdj=sdj-59th%20day.htm&ses_year=2010&sesstype=rs&headtype=jour&houseorig=s) (accessed Apr. 2, 2011); W. Va. H. J., 79th Legis., 2d Sess. 2350 (Mar. 13, 2010) (available at http://www.legis.state.wv.us/Bulletin_Board/house_journal.cfm?ses_year=2010&sesstype=rs&headtype=jour&houseorig=h) (accessed Apr. 2, 2011).

²¹⁵ E-mail from Troy Andes, Delegate, W. Va. H. of Delegates, to Richard Myers, Law Student, Lewis & Clark L. Sch., *Quick Question about Last Year’s Vote* (Jan. 1, 2011, 12:31 a.m. EDT) (on file with *Animal Law*).

²¹⁶ Ill. Sen. 3604, 96th Gen. Assembly (Feb. 11, 2010); Ind. H. 1099, 116th Gen. Assembly, 2d Reg. Sess. § 1 (Jan. 5, 2010); Utah H. 155, 58th Utah Legis., Gen. Sess. (Feb. 22, 2010).

²¹⁷ Idaho Sen. 1331, 60th Legis., 2d Reg. Sess. (Feb. 9, 2010); Idaho Legis., *Senate Bill 1331*, <http://www.legislature.idaho.gov/legislation/2010/S1331.htm> (accessed Apr. 2, 2011) (bill history for Senate Bill 1331); Mo. H. 2291, 95th Gen. Assembly, 2d Reg. Sess. (Mar. 3, 2010); Mo. H., *HB 2291*, <http://www.house.mo.gov/billssummary.aspx?bill=HB2291&year=2010&code=R> (accessed Apr. 2, 2011) (bill history for House Bill 2291); Okla. H. 2345, 52d Legis., 2d Sess. (Feb. 1, 2010); Okla. Legis., *HB2345*, <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html>; *select* Basic Search Form; *select* 2010 Regular Session; *search* hb2345 (accessed Apr. 2, 2011) (bill history for House Bill 2345).

²¹⁸ N.Y. Assembly 8597, 233d Annual Legis. Sess. § 1 (Jan. 19, 2010) (as amended); R.I. H. 7769, Jan. Sess. 2010 § 1 (Feb. 25, 2010).

²¹⁹ Cal. Sec. of St. Debra Bowen, *Statement of the Vote* 13 (Nov. 4, 2008) (available at http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf) (accessed Apr. 2, 2011) (Proposition 2 passed with 63.5% of the vote).

²²⁰ Tenn. H. 3315, 106th Gen. Assembly § 1 (Feb. 1, 2010); Tenn. Sen. 3180, 106th Gen. Assembly § 1 (Jan. 28, 2010).

²²¹ Tenn. H. 3343, 106th Gen. Assembly § 1 (Feb. 1, 2010); Tenn. Sen. 3264, 106th Gen. Assembly § 1 (Jan. 28, 2010).

agricultural operations.²²² All of these Tennessee bills failed to receive a committee or floor vote.²²³

C. *Right-to-Hunt Constitutional Amendments*

In the past decade, several states have amended their constitutions to establish a right to hunt.²²⁴ More than a dozen states now have constitutional provisions expressly or impliedly providing citizens the right to hunt, trap, or fish.²²⁵ Courts have widely interpreted these constitutional provisions to have little, if any, effect on the authority of state legislatures to regulate hunting and fishing, including requiring hunting licenses, imposing fees, and prohibiting the taking of some species.²²⁶ However, courts have cited right-to-hunt constitutional provisions in addressing a wide range of other issues, including riparian rights, due process, and search-and-seizure claims.²²⁷ Despite the limited legal significance of such constitutional provisions, proponents insist that they are necessary to hedge against “liberal” efforts to restrict gun rights and ban sports hunting.²²⁸ The National Rifle Association has identified constitutional amendments as a “state-by-state priority” and vowed to “continue to lead efforts to pass these amendments across the nation.”²²⁹ Critics of the amendments suggest that the constitutional measures are “a solution in search of a problem” designed to increase voter turnout among conservative constituencies.²³⁰

²²² Tenn. H. 3386, 106th Gen. Assembly § 1(b) (Feb. 1, 2010); Tenn. Sen. 3546, 106th Gen. Assembly § 1(b) (Jan. 28, 2010).

²²³ Tenn. Gen. Assembly, *Bill Information for HB3315*, <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB3315&ga=106> (accessed Apr. 2, 2011); Tenn. Gen. Assembly, *Bill Information for HB3343*, <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB3343&ga=106> (accessed Apr. 2, 2011); Tenn. Gen. Assembly, *Bill Information for HB3386*, <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB3386&ga=106> (accessed Apr. 2, 2011).

²²⁴ Douglas Shinkle, Natl. Conf. of State Legis., *State Constitutional Right to Hunt and Fish*, <http://www.ncsl.org/?tabid=21237> (updated Nov. 2010) (accessed Apr. 2, 2011) [hereinafter NCSL].

²²⁵ See Jeffrey Omar Usman, *The Game is Afoot: Constitutionalizing the Right to Hunt and Fish in the Tennessee Constitution*, 77 *Tenn. L. Rev.* 57, 75, 77–78, 81 (2010) (listing twelve states that expressly provide for the right to hunt and another five that provide for the right to bear arms for the purpose of, among other things, hunting: Alabama, California, Delaware, Georgia, Louisiana, Montana, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin).

²²⁶ *Id.* at 85.

²²⁷ *Id.* at 86.

²²⁸ Suzi Parker, *A Constitutional Right to Hunt? Voters in Three States to Decide*, *Christian Sci. Monitor* 4 (Feb. 26, 2010) (available at <http://www.csmonitor.com/USA/Politics/2010/0226/A-constitutional-right-to-hunt-Voters-in-three-states-to-decide> (accessed Apr. 2, 2011)).

²²⁹ Natl. Rifle Assn., *NRA’s Right to Hunt and Fish Amendments Adopted in Three States*, <http://www.nrapvf.org/news-alerts/2010/11/nra%E2%80%99s-right-to-hunt-and-fish-amendments-adopted-in-three-states.aspx> (Nov. 5, 2010) (accessed Apr. 2, 2011).

²³⁰ Parker, *supra* n. 228, at 4.

Three states—Arkansas, South Carolina, and Tennessee—successfully amended their constitutions in 2010 to include a right to hunt.²³¹ Legislators in Arizona passed a constitutional amendment with the requisite two-thirds majority, but voters rejected the measure 56% to 44%.²³² In Arkansas, voters approved Senate Joint Resolution 3 with more than 82% of the vote.²³³ The amendment provides that citizens “have the right to hunt, fish, trap, and harvest wildlife . . . subject only to regulations that promote sound wildlife conservation and management.”²³⁴ It also provides that “hunting, fishing, and trapping shall be a preferred means of managing and controlling non-threatened species.”²³⁵ South Carolina passed a constitutional amendment that similarly allows restrictions for wildlife conservation: “The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly.”²³⁶ In Tennessee, approximately 90% of voters supported a constitutional amendment to impose a reasonableness requirement on any limits to hunting and fishing.²³⁷ As passed, the amendment declares, “The citizens of this state shall have the personal right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law.”²³⁸ Ten other states considered but did not pass legislation to amend their constitutions to protect the right to hunt and fish.²³⁹

²³¹ NCSL, *supra* n. 224.

²³² *Id.*; Ariz. Sec. of St., *State of Arizona Official Canvass 14* (Nov. 29, 2010) (available at <http://www.azsos.gov/election/2010/General/Canvass2010GE.pdf> (accessed Apr. 2, 2011)) (Proposition 109 received 714,144 yes votes and 926,991 no votes).

²³³ Ark. Sen. Jt. Res. 3, 87th Gen. Assembly, 2009 Reg. Sess. (Apr. 7, 2009) (as enrolled); Ark. Sec. of St., *Vote Naturally, 2010 General Election & Non Partisan Judicial Runoff Election*, http://www.votenaturally.org/electionresults/index.php?ac:show:contest_statewide=1&elecId=231&contestid=1 (accessed Apr. 2, 2011).

²³⁴ Ark. Sen. Jt. Res. 3, 87th Gen. Assembly, 2009 Reg. Sess. § 1 (Jan. 12, 2009).

²³⁵ *Id.*

²³⁶ S.C. H. Jt. Res. 3483, 118th Gen. Assembly, 2009–2010 Sess. § 1 (May 20, 2009) (as enrolled).

²³⁷ Tenn. St. Gen., *Constitutional Amendment 2* (available at <http://www.tn.gov/sos/election/results/2010-11/CACounty.pdf> (updated Dec. 2, 2010) (accessed Apr. 2, 2011)) (the constitutional amendment received 1,289,544 yes votes and 147,506 no votes); *see also* Tenn. Sen. Jt. Res. 30, 106th Gen. Assembly (Mar. 18, 2010) (available at <http://state.tn.us/sos/acts/106/resolutions/SJR0030.pdf> (accessed Apr. 2, 2011)) (the constitutional amendment passed by the voters was proposed by a joint resolution of the state’s general assembly).

²³⁸ Tenn. Sen. Jt. Res. 30, 106th Gen. Assembly at 2.

²³⁹ *See* NCSL, *supra* n. 224 (explaining that fourteen states considered such legislation in 2010 but only Arkansas, South Carolina, and Tennessee passed constitutional amendments).

D. Euthanasia of Dogs and Cats

Approximately 3 to 4 million animals are euthanized in animal shelters in the U.S. each year.²⁴⁰ Some of those animals are euthanized in carbon monoxide gas chambers—often in groups—in which death occurs from hypoxemia, or reduced blood oxygen levels.²⁴¹ According to opponents of the practice, death may take up to thirty minutes, causing animals to panic and suffer.²⁴² Numerous states have banned the use of gas chambers to euthanize cats and dogs.²⁴³ Eight legislatures considered bills on euthanasia in 2010, mostly regarding the use of gas chambers.²⁴⁴

In Illinois, State Senator Bill Brady introduced Senate Bill 2999, allowing the use of gas chambers to euthanize multiple animals at once.²⁴⁵ The bill would have partially repealed legislation passed in 2009 requiring that gas chambers only euthanize one animal at a time.²⁴⁶ Senate Bill 2999 contains a provision requiring “professional judgment when deciding whether or not a procedure shall involve the euthanasia of a single animal or multiple animals, taking into consideration the safety of facility staff and the most humane practices.”²⁴⁷ Senator Brady withdrew his sponsorship of Senate Bill 2999 shortly before winning his party’s nomination for governor,²⁴⁸ but the bill be-

²⁴⁰ Humane Socy. of the U.S., *Common Questions about Animal Shelters*, http://www.humanesociety.org/animal_community/resources/qa/common_questions_on_shelters.html (Oct. 26, 2009) (accessed Apr. 2, 2011); see also Am. Humane Assn., *Animal Shelter Euthanasia*, <http://www.americanhumane.org/about-us/newsroom/fact-sheets/animal-shelter-euthanasia.html> (accessed Apr. 2, 2011) (explaining estimates that 3.7 million animals were euthanized at shelters in 2008).

²⁴¹ Am. Veterinary Med. Assn., *AVMA Guidelines on Euthanasia* 9 (June 2007) (available at http://www.avma.org/issues/animal_welfare/euthanasia.pdf (accessed Apr. 2, 2011)).

²⁴² Press Release, Am. Socy. for the Prevention of Cruelty to Animals, *ASPCA Urges Pennsylvania Voters to Outlaw Gas Chambers in Animal Shelters* (June 30, 2010) (available at <http://www.aspc.org/Pressroom/press-releases/063010.aspx> (accessed Apr. 2, 2011)).

²⁴³ See Am. Humane Assn., *Humane Euthanasia of Shelter Animals Fact Sheet 2* (available at <http://www.americanhumane.org/assets/pdfs/animals/adv-ebi-fact-sheetpdf.pdf> (accessed Apr. 2, 2011)) (noting that nine states have laws explicitly banning all forms of gassing for all types of animals in shelters).

²⁴⁴ Del. Sen. 280, 145th Gen. Assembly § 3 (June 8, 2010); Ga. H. 788, 150th Gen. Assembly, 2009–2010 (May 20, 2010) (as passed House and Senate); Ill. Sen. 2999, 96th Gen. Assembly (Feb. 4, 2010); La. Sen. 73, 36th Legis., 2010 Reg. Sess. (June 16, 2010) (as enrolled); Mich. H. 6042, 95th Legis., Reg. Sess. (Apr. 13, 2010); Mich. H. 6043, 95th Legis., Reg. Sess. (Sept. 22, 2010) (as passed House); N.C. H. 1741, 2009 Gen. Assembly (May 18, 2010); Pa. Sen. 672, 2009 Reg. Sess. § 1 (Apr. 13, 2010) (as amended); Utah H. 185, 58th Utah Legis., Gen. Sess. § 2 (Feb. 3, 2010).

²⁴⁵ Ill. Sen. 2999, 96th Gen. Assembly at 2.

²⁴⁶ *Id.*; Ill. Sen. 38, 96th Gen. Assembly (Jan. 30, 2009) (codified at 510 Ill. Comp. Stat. 70/3.09(3) (2009)).

²⁴⁷ Ill. Sen. 2999, 96th Gen. Assembly at 2.

²⁴⁸ Mike Riopell, Quad-City Times, *Brady Backs Off Animal Euthanasia Proposal*, http://qctimes.com/news/state-and-regional/illinois/article_f8a53d90-21c3-11df-a189-001cc4c002e0.html (Feb. 24, 2010) (accessed Apr. 2, 2011).

came a major issue in the general election race when incumbent Governor Pat Quinn ran a television advertisement attacking Senator Brady for “mass euthanization of animals.”²⁴⁹

The Georgia General Assembly passed House Bill 788, prohibiting the use of gas chambers to euthanize cats and dogs.²⁵⁰ Georgia had previously banned most gas chambers but exempted animal shelters in rural counties or animal shelters that received permission from the Department of Agriculture prior to 1990.²⁵¹ The new statute categorically prohibits gas chambers for the euthanasia of cats and dogs.²⁵² Georgia lawmakers also passed House Bill 1106, requiring animal shelters to scan for a microchip prior to euthanizing an animal.²⁵³ An animal shelter or stray animal facility must scan for a microchip within twenty-four hours of receiving “any dog, cat, or other large animal traditionally kept as a household pet.”²⁵⁴ The animal must be scanned again for a microchip prior to being euthanized.²⁵⁵ A facility is not liable, however, for failure to scan an animal, nor is a facility required to scan an animal “too vicious or dangerous to permit safe handling.”²⁵⁶

Legislators in Louisiana and Utah considered the costs of euthanasia and ultimately took different actions on their respective bills addressing the issue. Louisiana unanimously passed Senate Bill 73, which includes a provision that will take effect in 2013 prohibiting the use of gas chambers to euthanize cats and dogs.²⁵⁷ The bill also re-

²⁴⁹ QuinnForIllinois, YouTube, *Bill Brady's Dog Plan*, <http://www.youtube.com/watch?v=7nvBtioirsg> (Sept. 30, 2010) (accessed Apr. 2, 2011); Louis Jacobson, Politifact.com, *Pat Quinn Blasts Bill Brady for Sponsoring Bill on Pet Euthanasia in Illinois Gubernatorial Race*, <http://www.politifact.com/truth-o-meter/statements/2010/oct/12/pat-quinn/pat-quinn-blasts-bill-brady-sponsoring-bill-pet-eu/> (Oct. 12, 2010) (accessed Apr. 2, 2011).

²⁵⁰ Ga. H. 788, 150th Gen. Assembly, 2009–2010 § 1 (available at <http://www.legis.ga.gov/Legislation/20092010/107349.pdf> (accessed Apr. 2, 2011)); Ga. Gen. Assembly, *HB 788 Animal Protection; Methods of Euthanasia; Provisions*, <http://www.legis.ga.gov/Legislation/en-US/History.aspx?Legislation=28253> (accessed Apr. 2, 2011) (bill history for House Bill 788).

²⁵¹ Ga. Code Ann. § 4-11-5.1(b), (h) (1995).

²⁵² Ga. Code Ann. § 4-11-5.1(d) (2010).

²⁵³ Ga. H. 1106, 150th Gen. Assembly, 2009–2010 (June 2, 2010) (available at <http://www.legis.ga.gov/Legislation/20092010/104540.pdf> (accessed Apr. 2, 2011)) (as passed by House and Senate); Ga. Gen. Assembly, *HB 1106 Animal Protection; Shelters Scan for Microchips Prior to Euthanasia; Provisions*, <http://www.legis.ga.gov/Legislation/en-US/History.aspx?Legislation=29667> (accessed Apr. 2, 2011) (bill history for House Bill 1106).

²⁵⁴ Ga. H. 1106, 150th Gen. Assembly, 2009–2010 at § 1.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ La. St. Legis., *SB's Final Passage Local & Consent*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=716026> (accessed Apr. 2, 2011) (House roll call tally for Senate Bill 73 final passage showing unanimous vote); La. St. Legis., *SB 3rd Read & Final Passage*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=700959> (accessed Apr. 2, 2011) (Senate roll call tally for Senate Bill 73 final passage showing unanimous vote); La. Sen. 73, 36th Legis., 2010 Reg. Sess. at 1 (available at <http://>

quires that cats and dogs be anesthetized prior to euthanasia by injection.²⁵⁸ Analysis by Louisiana committee staff noted that euthanasia by injection is less expensive than euthanasia in gas chambers.²⁵⁹ According to data from HSUS, the cost per euthanized animal is \$2.29 for injection versus \$3.09 for gassing.²⁶⁰ In Utah, State Representative Jay Seegmiller presented the same HSUS cost data at the hearing before the Utah House Government Operations Standing Committee.²⁶¹ Rep. Seegmiller's bill, House Bill 185, would have prohibited the use of gas chambers to euthanize more than one animal at a time unless the chamber contained compartments for individual animals.²⁶² Several representatives from animal shelters spoke against the bill at the hearing.²⁶³ The bill passed easily in the House but died in the Senate on a vote of nine to fifteen.²⁶⁴ Legislators in Michigan and Pennsylvania also considered but did not pass measures prohibiting the use of gas chambers.²⁶⁵

E. Primates as Pets

In 2010, Illinois became the twenty-second state in the nation to ban primates as pets.²⁶⁶ The sponsor of the legislation, State Representative Daniel Burke, cited attacks by pet primates on their owners

www.legis.state.la.us/billdata/streamdocument.asp?did=722846 (accessed Apr. 2, 2011)).

²⁵⁸ La. Sen. 73, 36th Legis., 2010 Reg. Sess. at 1.

²⁵⁹ La. Legis. Fiscal Off., Fiscal Note on SB 73, *Euthanasia in Animals*, 36th Legis., 2010 Reg. Sess. 1 (June 21, 2010) (available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=720985> (accessed Apr. 2, 2011)).

²⁶⁰ *Id.*

²⁶¹ Utah H., *Minutes of the House Government Operations Standing Committee*, 58th Utah Legis., Gen. Sess. 2 (Feb. 26, 2010) (available at <http://le.utah.gov/~2010/minutes/HGOC0226.pdf> (accessed Apr. 2, 2011)); Doug Fakkema, *EBI Cost Analysis Matrix 2009 4*, http://www.animalsheltering.org/programs_and_services/euthanasia_information/ebi-cost-analysis-worksheet-2009.pdf (Jan. 2009) (accessed Apr. 2, 2011).

²⁶² Utah H. 185, 58th Utah Legis., Gen. Sess. (available at <http://le.utah.gov/~2010/bills/hbillint/hb0185.pdf> (accessed Apr. 2, 2011)).

²⁶³ Utah H., *Minutes of the House Government Operations Standing Committee*, 58th Utah Legis., Gen. Sess. at 2.

²⁶⁴ Utah St. Legis., *H.B. 185 Substitute Bill Status*, <http://le.utah.gov/~2010/status/hbillsta/hb0185s01.htm> (accessed Apr. 2, 2011).

²⁶⁵ Mich. H. 6042, 95th Legis., Reg. Sess. (Apr. 13, 2010); Mich. Legis., *House Bill 6042 (2010)*, [http://www.legislature.mi.gov/\(S\(tux5jxih4c5yn0v0yo2cz0rr\)\)/mileg.aspx?page=getObject&objectName=2010-HB-6042](http://www.legislature.mi.gov/(S(tux5jxih4c5yn0v0yo2cz0rr))/mileg.aspx?page=getObject&objectName=2010-HB-6042) (accessed Apr. 2, 2011) (providing bill history for House Bill 6042); Pa. Sen. 672, 2009 Reg. Sess. (Apr. 13, 2010); Pa. Gen. Assembly, *Senate Bill 672*, http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2009&sind=0&body=S&type=B&bn=672 (accessed Apr. 2, 2011) (providing bill history for Senate Bill 672).

²⁶⁶ Humane Socy. of the U.S., *The HSUS, HSLF Praise Illinois Governor for Signing Primate Pet Ban and Antifreeze Safety Bills*, http://www.humanesociety.org/news/press_releases/2010/07/illinois_primates_antifreeze_bills_072210.html (July 22, 2010) (accessed Apr. 2, 2011) [hereinafter *Primate Ban*].

as the motivation behind the bill.²⁶⁷ Several attacks by primates have received nationwide attention,²⁶⁸ including an attack in 2009 in which a 70-year-old Connecticut woman was “viciously mauled” by her friend’s pet primate named Travis.²⁶⁹ In addition to the risk of attack, proponents of the ban pointed to concerns about animal welfare and spread of disease.²⁷⁰

The legislation in Illinois amended the Illinois Dangerous Animals Act to prohibit possession or any right of property in primates.²⁷¹ The newly modified statute establishes a class C misdemeanor for possession of “a nonhuman member of the order primate, including but not limited to chimpanzee, gorilla, orangutan, bonobo, gibbon, monkey, lemur, loris, aye-aye, and tarsier.”²⁷² It exempts possession of capuchin monkeys trained to assist a person with permanent mobility impairment.²⁷³ It also exempts several types of entities, such as zoos, universities, research facilities, and animal sanctuaries.²⁷⁴ Under the bill, anyone who possessed a primate prior to January 1, 2011 may maintain possession of the animal so long as the person notifies the local animal control agency.²⁷⁵ Ironically, the primate that attacked a Connecticut woman was allowed to remain in the owner’s home under a similar grandfather exemption for pet primates owned prior to passage of the Connecticut law.²⁷⁶

Three other state legislatures considered but did not pass legislation addressing the issue of primates as pets.²⁷⁷ Legislators in Michi-

²⁶⁷ Michelle Manchir, Chicago Trib., *Lawmakers Vote to Ban Pet Monkeys, Novelty Lighters: A Look at Some of the 623 Bills That Passed the Legislature This Session*, http://articles.chicagotribune.com/2010-05-30/news/ct-met-illinois-legislature-bills-05320100528_1_lighter-ban-novelty-lighters-monkeys (May 30, 2010) (accessed Apr. 2, 2011).

²⁶⁸ See e.g., Rich Schapiro, Esquire, *The Worst Story I Ever Heard*, <http://www.esquire.com/print-this/chimpanzee-attack-0409-4?page=all> (Apr. 2009) (accessed Apr. 2, 2011) (telling the story of a California man who was attacked by two chimpanzees who had escaped their enclosures at an animal sanctuary).

²⁶⁹ Andy Newman, *Pet Chimp Is Shot to Death After Mauling Woman in Connecticut*, N.Y. Times A30 (Feb. 17, 2009) (available at <http://www.nytimes.com/2009/02/17/nyregion/17chimp.html?ref=nyregion>) (accessed Apr. 2, 2011).

²⁷⁰ *Primate Ban*, supra n. 266.

²⁷¹ Ill. H. 4801, 96th Gen. Assembly, Reg. Sess. (Jan. 12, 2010) (available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=096-1219>) (accessed Apr. 2, 2011); 720 Ill. Comp. Stat. 585 (2010).

²⁷² 720 Ill. Comp. Stat. 585/0.1, 3.

²⁷³ *Id.* at 585/1(e).

²⁷⁴ *Id.* at 585/1(a).

²⁷⁵ *Id.* at 585/1(6).

²⁷⁶ Anahad O’Connor, *Woman Mauled by Chimp Has Surgery, and Her Vital Signs Improve*, N.Y. Times, <http://www.nytimes.com/2009/02/19/nyregion/19chimpanzee.html> (Feb. 18, 2009) (accessed Apr. 2, 2011); Conn. Gen. Stat. Ann. § 26-40a (West 2010).

²⁷⁷ Mich. H. 5762, 95th Legis., 2009–2010 Reg. Sess. (Jan. 21, 2010) (available at <http://www.legislature.mi.gov/documents/2009-2010/billintroduced/House/pdf/2010-HIB-5762.pdf>) (accessed Apr. 2, 2011); Okla. Sen. 1798, 52d Legis., 2d Reg. Sess. (Feb. 1, 2010) (available at <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html>); select Basic Search Form, select 2010 Regular Session, search SB1798, select Introduced (ac-

gan proposed a ban on pet primates with no exception for current owners.²⁷⁸ The bill provided for fines of up to \$1,000 and imprisonment for up to ninety-three days for violation of the act.²⁷⁹ In Oklahoma, legislators introduced a bill which, with several exceptions, would have prohibited the possession of primates, bears, lions, tigers, leopards, cheetahs, jaguars, and cougars.²⁸⁰ In Virginia, legislators introduced a bill that would have amended existing dangerous animal statutes by adding primates to a list of prohibited animals.²⁸¹ All three bills died in committee in their house of origin.²⁸²

cessed Apr. 2, 2011)); Va. Sen. 570, 2010 Sess. (Jan. 13, 2010) (available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+SB570+pdf> (accessed Apr. 2, 2011)).

²⁷⁸ Mich. H. 5762, 95th Legis., 2009–2010 Reg. Sess.

²⁷⁹ *Id.* at § 70A(1).

²⁸⁰ Okla. Sen. 1798, 52d Legis., 2d Sess. at § 1(A)(3), (B)(2), (F).

²⁸¹ Va. Sen. 570, 2010 Sess.

²⁸² Mich. Legis., *House Bill 5762 (2010)*, <http://www.legislature.mi.gov/%28S%28b1a4am45nvt3xx45bmv2uu55%29%29/mileg.aspx?page=getObject&objectName=2010-HB-5762> (accessed Apr. 2, 2011); Okla. Legis., *SB1978 Introduced*, <http://webserver1.lsb.state.ok.us/WebBillStatus/main.html>; *select* Basic Search Form, *search* SB1798 (accessed Apr. 2, 2011)); Va. Legis., *SB 570 Primates; Prohibits Any Person from Acquiring after July 1, 2010, penalty*, <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=101&typ=bil&val=sb570> (accessed Apr. 2, 2011)).