STATE ANIMAL USE PROTECTION STATUTES: AN OVERVIEW

By Jen Girgen*

Although much attention has been given to the Animal Enterprise Terrorism Act, a federal statute enacted to deter and punish extra-legal animal rights activism, comparatively little attention has been afforded the various state versions of this law. This Article is an attempt to help remedy this deficit. It offers a comprehensive overview of existing state animal use protection statutes and describes legislative trends in this area.

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I. INTRODUCTION

Considerable academic and popular attention has been paid to the federal Animal Enterprise Terrorism Act (AETA), which might fairly be regarded as the crown jewel of animal use protection statutes. The

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end product of numerous Congressional hearings and legislative tweaking over the course of two decades, the AETA was enacted to deter and punish extra-legal animal rights activism targeting agricultural operations, research laboratories, fur farms, and other "animal enterprises." However, less has been written about the numerous animal use protection laws that exist at the state level. This deficit is noteworthy, given that the majority of states have enacted their own such laws, and that some of these are more inclusive and/or punitive than the better-known federal statute.

For purposes of this Article, an animal use protection statute is a statute designed to shield designated animal uses and industries from the harm that may arise as a result of extra-legal animal rights activities. It is a statute that prohibits an act—or, more likely, specially punishes an already-prohibited act such as vandalism, breaking and entering, or theft—that targets a particular animal use or industry, like animal research and animal agriculture. In short, animal use protection statutes are the criminal and civil laws enacted in response to the threat of the contemporary American animal rights movement.


6 Although this definition would likely include the “hunter harassment/interference” laws that have been enacted in all fifty states, separate specialized hunting harassment/interference statutes have been excluded from this analysis. Also omitted from this analysis are statutes that only unintentionally target extra-legal animal activism. For example, Delaware declares that criminal trespass in the first degree occurs when one “enters or remains unlawfully in a dwelling or building used to shelter, house, milk, raise, feed, breed, study or exhibit animals.” Del. Code Ann. tit. 11, § 823 (Lexis 2007).
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This Article provides a comprehensive overview of these state animal use protection laws. Although there are clear legislative trends that can be identified, at the same time, there is much variation among these state laws. States differ with respect to how they define key concepts such as “animal” and “animal facility,” the industries and animal uses they protect, the behaviors they proscribe and punish, and the punishments and remedies they permit. While some state statutes are similar to the federal AETA in the sense that they are inclusive in their definitions and expansive in their protective reach, others are more specific, and some are quite limited. Similarly, with respect to criminal punishments and civil remedies, some states promise harsh punishment and large civil awards while others are far more restrained.

II. WHICH STATES HAVE ENACTED THESE STATUTES?

Thirty-eight states currently have on their books one or more animal use protection statutes, for a total of sixty-six such statutes.7

Although the behavior this law seeks to prohibit happens to be quintessential animal liberation behavior, this particular statute was enacted in 1953 and was not drafted with animal activists in mind.

Additionally, in the early 1990s, two other states (Maine and Texas) passed such laws, but these were repealed within two years of their enactment.8

III. WHEN WERE THESE LAWS PASSED?

In 1988, Massachusetts and Minnesota became the first states to pass animal use protection laws.9 With other states soon following suit, the majority of these statutes were enacted in the late 1980s and early 1990s, and forty-four of the sixty-eight statutes identified in this research were enacted in the five-year period between 1988 and 1993.10 Between 1994 and 1999, another nine statutes were enacted.11 Fifteen statutes have been passed since the turn of this century—most recently in 2008, when the California legislature enacted a pair of laws

in response to anti-animal research protest activities occurring at universities across the state.¹²

IV. WHY WERE THESE LAWS ENACTED?

Six of these statutes include legislative declarations offering insight as to why these laws were enacted.¹³ Most commonly, stated rationales include desires to control unlawful activities,¹⁴ to protect economic interests and private property rights,¹⁵ and—perhaps ironically, given the fact that animal liberationists see themselves as saving animals from those who do them harm—to protect the animals themselves.¹⁶ Additional justifications include wishes to protect crucial research and/or production,¹⁷ to ensure the public’s safety (e.g., by limiting communities’ exposure to contagious diseases),¹⁸ and to protect the productive use of public funds.¹⁹

V. WHICH ANIMAL USES AND INDUSTRIES DO THESE LAWS PROTECT?

The answer to the question of which animal uses and industries animal use laws protect depends upon how the respective states have defined certain key terms like “animal,” “animal activity,” “animal enterprise,” and “animal facility.” While some statutes define these terms narrowly (thereby limiting the animal uses and industries afforded


protection), others either fail to define them (possibly leading to issues with uncertainty and vagueness), or define them very broadly.20 An illustration of the latter, expansive definition is found in South Dakota’s law protecting animal facilities.21 Here, the term “animal facility” is defined as “any vehicle, building, structure, research facility, premises or area where an animal is kept, handled, housed, transported, exhibited, bred or offered for sale.”22 Similarly, “animal” is defined expansively as “any living vertebrate except human beings.”23 Consequently, virtually all uses of animals are protected by this law—arguably even those uses that are not themselves lawful (e.g., dog fighting).

Generally speaking, animal use protection laws may be characterized as being either “industry inclusive” or “industry limited.” As the name suggests, an “industry inclusive” law safeguards more than one type of animal use. For example, Arkansas’s farm animal and research facilities statute protects entities using animals in food or fiber production, agriculture, research, testing, and education.24 At present, thirty-two states have industry inclusive laws, and because several states have enacted more than one such law, nationwide, there are a total of forty-eight such statutes.25

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20 To illustrate, Alabama defines “animal” broadly as “every living creature, domestic or wild, with the exception of man and animals used for illegal gaming purposes.” Ala. Code § 13A-11-152(1). Arkansas defines the term more narrowly as “any warm or cold bled animal used in food or fiber production, agriculture, research, testing, or education, including poultry, fish and insects.” Ark. Code Ann. § 5-62-202(1). Louisiana does not define “animal” anywhere in its animal use protection statutes, even though these laws discuss offenses against animal users. La. Stat. Ann. §§ 9:2799.4, 14:102.9, 14:228, 14:228.1.


22 Id. at § 40-38-1(2).

23 Id. at § 40-38-1(1).


However, some states’ statutes are not as comprehensive with respect to the uses and industries they defend, and their “industry limited” laws protect only a specific animal activity. An illustration of an industry limited law is North Carolina’s statute prohibiting interference with animal research. This statute is industry limited because although it proscribes a range of behaviors (and thus is “behavior inclusive,” a concept described below), it protects only a specific animal use industry (animal research). Currently, thirteen states have at least one industry limited law; however, some states have more than one, and consequently, there are a total of eighteen such statutes in existence.

The sixty-six animal use protection laws explicitly protect a very wide range of animal activities and industries. In particular,

- fifty-eight (87.9%) protect those using animals in research, testing, science, and/or biotechnology

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27 This statute prohibits (1) unauthorized entry into a research facility with intent to disrupt operations, damage the facility or property, release an animal, or interfere with the care of an animal; (2) damaging a research facility or property; (3) releasing an animal kept in a research facility; and (4) interfering with the care of an animal kept in a research facility. Id. at § 14-159.2(a).


forty-four (66.7%) apply to the use of animals in agriculture, food production, food processing, and/or food preparation.  
forty (60.6%) protect the use of animals in education.  
thirty (45.5%) defend those using animals for fur, fiber, and/or clothing production—this category includes those raising animals for their fur.


• eighteen (27.3%) protect those selling animals or using them for a commercial purpose
• twelve (18.2%) safeguard exhibitions, displays, and/or fairs using animals
• eight (12.1%) shield the breeding, propagation, and/or restocking of animals
• six (9.1%) protect hunting, fishing, trapping, and/or wildlife management. (This figure does not include any separate “hunter harassment/interference” laws which may also have been enacted in a given state. All fifty states have some version of a hunter harassment/interference law.)
• six (9.1%) protect the use of animals for “recreation” or “entertainment”

33 In the interest of maintaining mutually exclusive animal use categories, for this project, a statute was counted as protecting a commercial use only if that commercial use could be considered independent of the other uses listed here.

34 Again, a statute was counted as protecting the exhibition or display of animals only if that exhibition or display was found to be independent of the other named uses.

35 Once again, a statute was characterized as protecting the breeding, propagation, and/or restocking of animals only if that statute treats the breeding, propagation, and/or restocking as independent of the other named uses.

five (7.6%) defend rodeos, horse and dog events, and/or other competitive animal events\textsuperscript{39}

five (7.6%) shield the use of animals for public safety and “protective custody” purposes\textsuperscript{40}

four (6.1%) protect zoos, aquariums, amusement parks, and/or circuses using animals\textsuperscript{41}

and, finally, but to a lesser extent, some statutes safeguard the use of animals for “personal” purposes,\textsuperscript{42} companionship,\textsuperscript{43} protection of persons or property,\textsuperscript{44} and veterinary purposes,\textsuperscript{45} and some protect the keeping of animals in shelters, pounds, pet stores, and/or kennel facilities.\textsuperscript{46}

Importantly, as suggested earlier, some statutes define key terms so broadly that they seem to protect virtually any use of an animal by anyone. For example, Louisiana’s statute prohibiting interference with animal research facilities or animal management facilities\textsuperscript{47} defines “animal management facility” as “that portion of any vehicle, building, structure, or premises, where an animal [not defined] is kept, handled, housed, exhibited, bred, or offered for sale, and any agricultural trade association properties.”\textsuperscript{48} This definition is so all-encompassing that it would seem to include all persons keeping any animal for any purpose whatsoever—perhaps even for a purpose that is itself unlawful. Several other statutes also have such sweeping provisions.\textsuperscript{49}


\textsuperscript{42} Ohio Rev. Code Ann. § 901.511(A)(1).


\textsuperscript{44} Mo. Rev. Stat. Ann. § 578.029(1); Wis. Stat. Ann. §§ 943.75(2), 895.57(2).


\textsuperscript{48} Id. at 14:228(B)(2).

\textsuperscript{49} See e.g. S.D. Codified Laws § 40-38-1(2) (broadly defining “animal facility” as “any vehicle, building, structure, research facility, premises or area where an animal [defined as “any living vertebrate except human beings” (S.D. Codified Laws § 40-38-1(1)]) is kept, handled, housed, transported, exhibited, bred or offered for sale”); Ariz. Rev. Stat. Ann. § 13-2301(C)(2) (defining “animal facility” as “a building or premises where a commercial activity in which the use of animals [not defined] is essential takes place”); however, this statute does limit its protection to lawful enterprises (Ariz. Rev. Stat. Ann. § 13-2301(C)(3)); Ohio Rev. Code Ann. § 2923.31(M) (broadly protecting “any activity that involves the use of animals or animal parts,” but, again, requiring that such activity be lawful (Ohio Rev. Code Ann. § 2923.31(O))).
Finally, in addition to protecting the above-mentioned animal uses and industries, fifteen of these statutes extend their aegis to would-be targets of extra-legal environmentalism.\(^{50}\) For example, these laws safeguard things like crops or plants, and/or activities such as mining and logging.\(^{51}\)

VI. WHAT TYPES OF BEHAVIORS DO THESE LAWS PENALIZE?

In addition to being “industry inclusive” or “industry limited,” these laws may be either “behavior inclusive” or “behavior limited.” Statutes that are “behavior inclusive” proscribe more than one behavior. This Article discussed Arkansas’s Farm Animal and Research Facilities statute earlier as an illustration of an industry inclusive statute.\(^ {52}\) In addition, this particular law serves as an example of a behavior inclusive statute, as it prohibits a range of activities if committed with the intent to disrupt or damage the enterprise conducted at an animal facility.\(^ {53}\) Twenty-nine states currently have at least one behavior inclusive law; however, because some states have multiple statutes, a total of thirty-eight behavior inclusive laws were identified in this project.\(^ {54}\)


\(^ {51}\) See e.g. 18 Pa. Consol. Stat. Ann. § 3311(a), (d); 42 Pa. Consol. Stat. Ann. § 8319(d) (protecting activities involving natural resources, such as mining or foresting, and facilities where a plant or natural resource is lawfully housed, exhibited, sold, or used in scientific research, teaching, or testing).


\(^ {53}\) Specifically, this statute prohibits (a) exercising control over the facility or an animal or property with the intent to deprive the owner; (b) damaging or destroying the facility or an animal or property; (c) entering or remaining concealed in the facility with an intent to commit a prohibited act, or entering the facility and committing or attempting to commit a prohibited act; and (d) entering or remaining in the facility when one has notice that entry is forbidden or receives notice to depart but fails to depart. \(id.\) at § 5-62-203.

Not all animal use protection laws are as broad with respect to what they proscribe. These “behavior limited” statutes prohibit only a particular type of behavior. For example, while Colorado’s unauthorized release of an animal statute is industry inclusive (in the sense that it includes within its scope of protection a range of animal users—specifically, all those keeping animals confined for scientific, research, commercial, sporting, educational, or public safety purposes), it is also behavior limited because it addresses only one particular type of behavior—the unauthorized release of animals kept for any of these purposes.55 Currently, seventeen states have at least one behavior limited law, and there are twenty-seven such statutes nationwide.56

The animal use protection statutes explicitly prohibit a variety of behaviors affecting property and—to a much lesser extent—persons. Of the statutes identified in this research, fifty-five (83.3%) expressly prohibit damaging or causing the loss of real or personal property (including animals57), for example, by theft, vandalism, or release of an animal.58 Thirty-three (50%) of the statutes prohibit wrongfully enter-

57 These statutes—consistent with a deeply entrenched tradition in American law—characterize animals as “property.” See generally Gary L. Francione, Animals, Property, and the Law (Temple U. Press 1995) (arguing that by relegating animals to the status of personal property, our humanocentric laws afford animals very little protection and sanction their exploitation); Elizabeth L. DeCoux, Pretenders to the Throne: A First Amendment Analysis of the Property Status of Animals, 18 Fordham Envtl. L. Rev. 185, 188–206, 214–20 (2007) (arguing that the law’s treatment of animals as property is the product of the religious doctrine of human dominion, and as such, violates the First Amendment’s Establishment Clause); Diane Sullivan & Holly Vietzke, An Animal Is Not an iPod, 4 J. Animal L. 41, 44–58 (2008) (discussing recent developments and enduring concerns relating to animals’ property status).
ing, accessing, exercising control over, or remaining in an animal facility or other protected location; this category includes behaviors such as breaking and entering, entering by false pretense, trespassing, and entering with unlawful intent. Fifty percent (50.0%) of statutes forbid wrongdoingly possessing, exercising control over, or using animals, records, data, material, equipment, and other property. And thirteen (19.7%) prohibit otherwise obstructing, interfering with, disrupting, damaging, or destroying an animal facility, property, enterprise, or animal activity. Other, albeit less common, property-specific provisions include prohibitions against “endangering” or causing “substan-
tial risk of physical harm” to property (four (6.1%) statutes),62 entering an animal facility to take (or attempt to take) photographs, videos, or audio recordings (three (4.5%) statutes),63 and causing one to suffer pecuniary loss some other way (e.g., by deception) (three (4.5%) statutes).64

Notwithstanding the historical lack of incidents involving animal activists causing physical injury to others,65 several statutes do prescribe this particular harm. New Hampshire’s statute expressly prohibits causing bodily injury.66 Three (4.5%) statutes prohibit “endangering” or causing the “substantial risk of physical harm” to a person.67 Ohio forbids the use of a deadly weapon or dangerous ordnance,68 and Pennsylvania prohibits possessing, manufacturing, or transporting incendiary or explosive material,69 as well as causing or risking a catastrophe.70 And, finally, a 2008 California statute prohibits inciting harm by publishing personal information about an animal researcher or his or her family.71

Furthermore, a few states’ statutes expressly penalize those who conspire to commit, or those who aid and abet one who commits, a prohibited offense. Ohio’s statute expressly prohibits conspiracy to commit a prohibited act,72 and statutes in both Ohio and Washington punish those raising, soliciting, collecting, donating, or providing material support or resources to be used to help plan, prepare, carry out, or aid in a violation or concealment of or escape from a violation.73

Finally, one statute is so sweeping in its prohibitions that it warrants separate mention. A Utah law permits enhanced penalties for “any criminal offense” that is committed “with the intent to halt, im-

65 Although animal activists abroad have been charged with several violent incidents resulting in non-life-threatening injuries (see e.g. Chris Gray, Animal Rights Activist Jailed for Attack with Pickaxe Handle, The Independent, 4 (Aug. 17, 2001)), according to the FBI, no serious injuries or deaths have been attributed to U.S. activists (Thomas Walkom, U.S. Terror Hunt Targets Animal Activists, Toronto Star, A6 (Mar. 13, 2006)).
68 Ohio Rev. Code Ann. § 2923.31(O).
71 Cal. Penal Code § 422.4(a).
pede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise. Thus, because of its inclusive language, this particular statute would likely be interpreted as punishing all of the above-mentioned activities (and then some), provided they were committed with the requisite mens rea.

VII. WHAT PENALTIES AND REMEDIES DO THESE LAWS PROVIDE FOR?

Of the sixty-six statutes, fifty-eight are criminal laws. Twelve of these statutes treat the prohibited act as a misdemeanor, and twenty-four as either a misdemeanor or felony, de-

74 Utah Code Ann. § 76-6-110(2).
pending upon the act and/or harm caused. Rather than categorizing violations as misdemeanors or felonies, a final statute from New Jersey specifies that offenses committed against a research facility are eligible for double restitution.

These laws make available a variety of penalties and remedies. All of the criminal laws (with the exception of the just-mentioned New Jersey statute) punish the offender with incarceration and fines. Forty (60.6%) of the sixty-six statutes allow courts to award restitution and/or damages (e.g., for loss of profit or income, costs of repeating an interrupted or invalidated experiment, costs of restoring a released animal to confinement, and/or punitive damages).


statutes permit the recovery of expenses incurred in prosecution or litigation (e.g., reasonable attorneys’ fees, investigation costs, and/or court costs).82 Finally, twelve (18.2%) provide for the issuance of an injunction or restraining order,83 and four (6.1%) allow some other penalty or remedy such as forfeiture of property, dissolution of an offending organization, or payment of interest on any damages awarded.84

VIII. CONCLUSION

Like their better-known federal counterpart, the Animal Enterprise Terrorism Act, the state animal use protection statutes are designed to shield particular animal uses and industries from extra-legal animal rights activities. Although supporters of these laws have applauded their presumed deterrent and retributive benefits,85 detractors have questioned their wisdom, their necessity, and also, in some


instances, their constitutionality. The purpose of this Article is not to assess the validity of either side’s arguments. Rather, it is the author’s hope that the preceding overview will serve as a resource for all persons interested in better understanding state-level legislative responses to extra-legal animal activism.

86 See generally Lovitz, supra n. 5, at 84–87, 90–96 (alleging that many ecoterrorism laws are unconstitutionally vague and overbroad and constitute viewpoint discrimination); Andrew N. Ireland Moore, Caging Animal Advocates’ Political Freedoms: The Unconstitutionality of the Animal and Ecological Terrorism Act, 11 Animal L. 255, 270–72 (2005) (asserting that the model Animal and Ecological Terrorism Act is unconstitutional, in part, because its purpose is to disrupt politically motivated activity); Will Potter, Green Is the New Red Blog, http://www.greenisthenewred.com/blog/ (accessed Nov. 20, 2011) (discussing the different issues surrounding criminal prosecution of activities labeled as ecoterrorism).