

The National Agricultural Law Center



University of Arkansas



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Legal Issues in Animal Agriculture: *Regulating Living Space*

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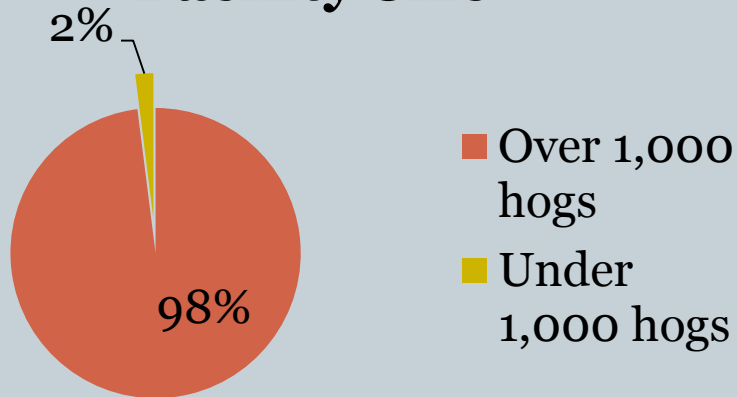
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U.S. Statistics on Animal Agriculture

Market Hogs

- 125 million sold annually
- Annual market value: \$18 billion

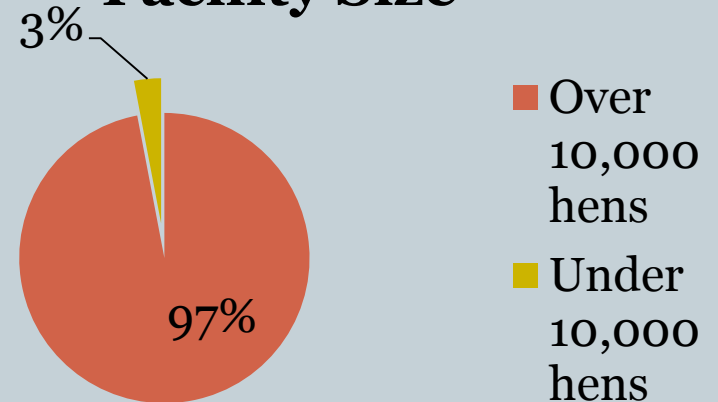
Facility Size



Laying Hens

- 350 million laying hens
- 2 billion dozen eggs produced annually

Facility Size



Typical Space Permitted: Breeding Hogs

- **Size:**

- Crates “allow the sow to stand, lie, eat and drink, but may not allow them to turn around”
 - ✦ Nat’l Pork Board

- **Reasons:**

- Allow producer feed and observe each sow individually to meet her needs
- Protect from other aggressive SOWS.
- Allow piglets opportunity to escape being crushed when the sow lies down



Sow and piglets in “farrowing crate.”

Before birth, the sow is confined in a “gestation crate.” These laws affect the use of gestation crates.

Typical Space Permitted: Laying Hens



**Chickens in a
“battery cage”**

- **Size:**
 - Typically 67 to 86 square inches of usable space per bird
 - ✦ United Egg Producers
- **Reason**
 - Additional space may be more stressful as more aggressive tendencies become manifest

Where Are These Laws In Place?

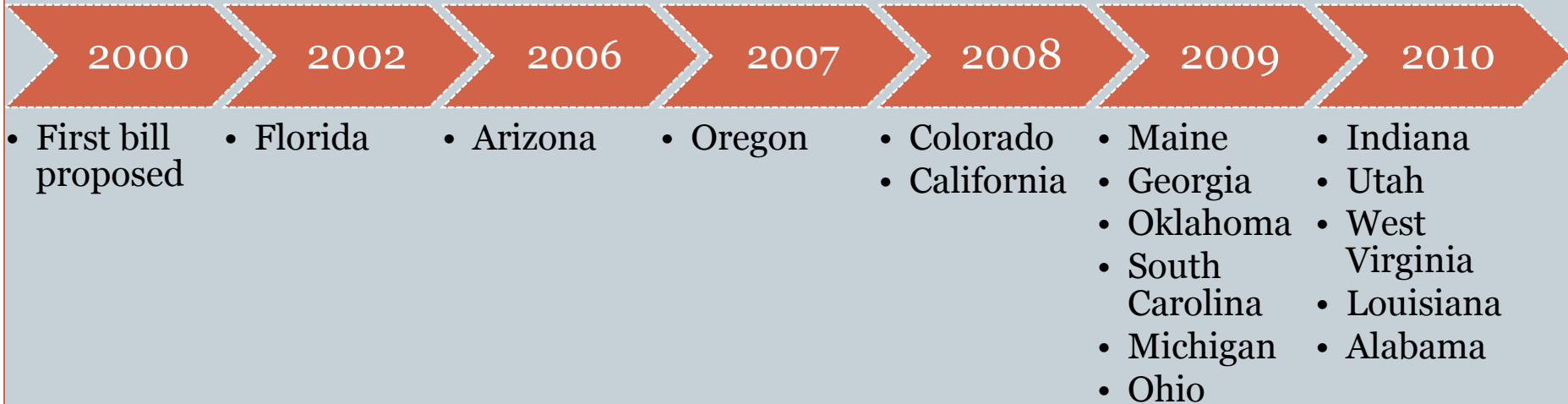
“HSUS Sponsored” Statutes

Florida
Arizona
Oregon
Colorado
California
Maine
Michigan
Washington
Oregon

“Ag Sponsored” Statutes

Georgia
South Carolina
Oklahoma
Ohio
Indiana
Utah
West Virginia
Louisiana
Alabama

Timeline of Farm Animal Confinement Laws



Passage Dates



HSUS SPONSORED STATUTES

Florida, 2002

- First state to propose/pass law on farm animal confinement
- Constitutional amendment via ballot initiative
 - 55% in favor, 45% opposed
- Applies to “pigs in pregnancy”
- Unlawful to confine/tether so pig cannot turn around freely
 - Exceptions for vet care and 7 days before pig’s due date
- Penalty: ≥ 1 year and/or $\geq \$5,000$
- Became effective November 2008
 - No prosecutions since then

Arizona, 2006



- First state to cover veal calves & pregnant sows
- Ballot initiative
 - 62% in favor, 38% opposed
- Unlawful to prevent animal from lying down and fully extending limbs or turning around freely
 - Exceptions for vet care, 7 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Penalty: ≥ 6 months and/or $\geq \$2,500$ ($\geq \$20,000$ for enterprise)
- Becomes effective December 2012

Oregon, 2007

- First legislatively passed statute
- Applies to pregnant sows
 - Original bill would have applied to calves as well
- Makes it unlawful to prevent animal from lying down and fully extending limbs or turning around freely *for more than 12 hours in any 24 hour period*
 - Exceptions for vet care, 7 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Penalty: $\geq \$720$ ($\geq \$1,440$ for enterprise)
- Becomes effective January 2012
- ** New 2011 law phasing out battery-cage system of production

Colorado, 2008

- Legislation that covers veal calves and “confirmed pregnant” sows
 - Initial threatened ballot proposal would cover sows, calves and hens
- Unlawful to prevent animal from standing up, lying down and turning around without touching the sides of its enclosure
 - Exceptions for vet care, 12 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Penalty: 3 - 12 months, and/or \$250 - \$1,000
 - May also include community service
- Effective date for calves: January 1, 2012
- Effective date for sows: January 1, 2018

California, 2008

- First state to cover laying hens
- “Proposition 2” ballot initiative: 63% in favor, 37% opposed
 - Advocates spent \$10.6 million (largest donor, HSUS : \$4.1 million)
 - Opponents spent \$8.9 million (largest donor, Cal-Maine foods: \$500,000)
- Applies to pregnant sows, veal calves and laying hens
- Unlawful to prevent animal from lying down, standing up and fully extending limbs or turning around freely
 - Exceptions for vet care, 7 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Penalty: ≥ 180 days and/or $\geq \$1,000$
 - Offenders may also be charged under general animal welfare laws
- Becomes effective January 2015
- New language: law specifically allows local governing body to adopt and enforce its own animal welfare laws and regulations

Maine, 2009

- Applies to pregnant sows and veal calves
- Unlawful to prevent animal from lying down, standing up and fully extending limbs or turning around freely
 - Exceptions for vet care, 7 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Penalties
 - Criminal: ≥ 1 year and/or $\geq \$2,000$ ($\$10,000$ for org)
 - Civil: no specified punishment
 - ✦ Offenders may also be charged under general animal welfare laws
- Like CA, specifically allows local governing body to adopt and enforce its own animal welfare laws and regulations
- New provision: Not affirmative defense that animal was kept in compliance with best management practices
- Became effective: January 2011

Michigan Background (2009)



- **June 23, 2009**
 - Original bill proposed
 - HSUS begins extensive lobbying campaign against bill
- **September 16, 2009**
 - Original bill read, voted on, and fails to pass
 - Sponsor immediately proposes new and radically different version
 - New version voted on and passes
- **September 30, 2009**
 - Senate takes up bill, votes on it and passes
- **October 1, 2009**
 - Versions are reconciled and enrolled for governor's signature
- **October 12, 2009**
 - Governor signs into law

Michigan Specifics (2009)















Proposed

- State Dep't of Agric. has sole authority to regulate livestock health and welfare
- Standards adopted and recognized would be the same standards established by the industry groups (Nat'l Pork Board, Nat'l Chicken Council, etc.)
- Create "Animal Advisory Council" in Dep't of Agric., responsible for considering and changing species-specific guidelines
- Presumption that raising animals in compliance with guidelines is humane

Enacted

- Applies to pregnant sows, veal calves, and laying hens
- Unlawful to prevent animal from lying down, standing up and fully extending limbs or turning around freely
 - Hens must have access to at least 1 square foot of floor space apiece
 - Standard exceptions
- Violation is civil offense
 - Allows Dep't of Agric. to bring civil action for injunction against violations
- Effective for calves: October 1, 2012; for hens and sows: October 1, 2019

Overview of Penalties

Florida			B	Crim: ≥ 1 year and/or $\geq \$5,000$	
Arizona			B	Crim: ≥ 6 mths and/or $\geq \$2,500$	
Oregon			L	Crim: $\geq \$720$	
Colorado			L	Crim: Min- 3 mths and/or \$250 Max- 12 mths and/or \$1,000	
California				B	Crim: ≥ 180 days and/or $\geq \$1,000$
Maine				L	Crim: ≥ 1 year and/or $\geq \$2,000$ Civ: No specified punishment
Michigan				L	Civ: Temporary or permanent injunction

Timelines



2008

- Florida

2011

- Maine

2012

- Arizona
- Oregon
- Colorado veal
- Michigan veal

2015

- California

2018

- Colorado sows

2019

- Michigan hens & sows

Effective Dates

California, 2010



- Prohibits shelled eggs from being sold for human consumption in California if the farm or location for production is not in compliance with California animal care standard.
- Takes effect January 1, 2015
- Penalty: >\$1,000 and/or >180 days
- Commerce clause concerns?
 - Bill analysis prepared for the California assembly's committee on agriculture stated that “the committee may wish to consider if this fits the Interstate Commerce Clause test; specifically, this is of compelling interest to California to protect public health.”

Washington & Oregon, 2011



- Require phasing-out of battery cages and phasing-in of enriched cage systems.
 - Housing that meets American Humane's standards
- Prohibits sale of eggs in the state(s) that are produced from birds living in battery cage systems.
- Not enough for HSUS, which threatened ballot proposals that would require cage-free housing.
 - Proposals have been withdrawn as a result of the HSUS/UEP agreement



“AG RESPONSE” STATUTES

“Ag Response” Statutes



- **Georgia & South Carolina (2009)**
 - Prevent local governments from adopting rules & regulations regulating animal husbandry
 - ✦ Reserves that power to the state legislature
- **Oklahoma (2009)**
 - Prevent local governments from adopting rules & regulations regulating animal husbandry
 - ✦ Reserves that power to the Department of Agriculture
- **Alabama (2010)**
 - Prevent local governments from adopting rules & regulations regulating animal husbandry
 - ✦ Reserves that power to the state veterinarian

Ohio: Background (2009)



- **February 9, 2009**
 - HSUS president meets with Ohio agricultural and veterinary groups, announcing plans to bring an animal confinement initiative to OH.
- **June 18, 2009**
 - Resolutions proposed in OH legislature for an initiative to create a constitutional amendment to set livestock welfare standards.
- **June 25, 2009**
 - Resolutions pass both chambers
- **July 13, 2009**
 - Resolutions reconciled and set for the November ballot
- **November 3, 2009**
 - Amendment passes, 64% to 36%.

Ohio Specifics (2009)



- Creates “Livestock Care Standards Board” with authority to establish and implement standards governing the care and well-being of livestock and poultry in Ohio.
 - Consists of: director of the state dep’t of agric., 3 family farmers, 1 food safety expert, 2 representatives of agricultural organizations, 1 vet, the state vet, the dean of the OSU College of Agric., 2 members of consumer groups, and a member of a county humane society
 - No more than 7 board members may be from the same political party.
- Ohio Department of Agriculture has authority to oversee and enforce the livestock care standards.
- Ohio General Assembly has authority to enact laws necessary for creating the Board and overseeing, implementing and enforcing its standards.

Ohio, Take 2 (2010)



- **Another proposed constitutional amendment**
 - HSUS was collecting signatures to place it on the ballot in November, 2010
 - Would have required the Livestock Board “to adopt certain minimum standards that will prevent the cruel and inhumane treatment of farm animals....”
 - Minimum standards outlined in proposal would have mirrored CA’s Prop. 2 standards
- **On July 1st, HSUS agreed to suspend the ballot initiative in response to a “compromise” that was reached with OH Farm Bureau**

“Ohio Compromise” (2010)

- Governor will support two new laws and sign an executive order.
 - The laws relate to regulation of dog breeding and toughening existing penalties for cockfighting.
 - Governor will sign executive order to ban possession and sale of "wild and dangerous animals," including "big cats, bears, primates, large constricting and venomous snakes, and alligators and crocodiles."
 - ✦ Existing owners are grandfathered in, but could not breed them or obtain more.
- Sick or injured "downer" animals may not be butchered for food
- Outline “humane methods” for euthanizing animals for slaughter.
- No restrictions on existing farms that raise hens in battery cages.
 - However, the state would issue no permits for new farms using battery cages after this year.
- New hog farms would not be permitted to use "gestation stalls" for pregnant sows after 2010, but existing stalls can remain until 2025.
- Crates for veal calves must be phased out by 2017.
- If these provisions are not followed, HSUS may file the already-gathered signatures to place the issue on the ballot in coming years
 - Pacelle has said that they will be used as “leverage” to ensure the agreement is followed.

Indiana, 2010



- Passed on March 1, 2010
- Allows the state board of animal health to establish standards governing the care of livestock and poultry
- In making the rules, the board will consider:
 - **Health and husbandry of livestock and poultry**
 - **Generally accepted farm management practices**
 - **Generally accepted veterinary standards and practices**
 - **The economic impact the standards may have on**
 - ✦ Livestock and poultry farmers
 - ✦ The affected livestock and poultry sector; and
 - ✦ Consumers

Utah, 2010

- Signed into law on March 23, 2010
- Gives the state “Agricultural Advisory Board” power to advise on the establishment of standards governing the care of livestock and poultry
- In doing so, they will consider
 - **Food safety**
 - **Local availability and affordability of food; and**
 - **Acceptable practices for livestock and farm management**
- Members are appointed from a list of nominees submitted by each organization with a seat on the board

West Virginia, 2010



- “Livestock Care Standards Board:” 13 members; 11 by governor
- Powers of the board:
 - Establish standards governing care and well-being of livestock;
 - Maintain food safety;
 - Encourage locally grown and raised food; and
 - Protect West Virginia farms and families
- In establishing standards, the board will consider:
 - Agricultural best management practices;
 - Biosecurity, disease prevention, and mortality data;
 - Food safety practices; and
 - The protection of local, affordable food supplies for consumers
- The Department of Agriculture administers and enforces the standards established by the board that are approved by the Legislature.

Louisiana, 2010



- **The Louisiana Board of Animal Health is given the powers and duties**
 - To establish standards governing the care and well-being of livestock and poultry kept for the purpose of producing marketable products.
- **In establishing standards, the board shall consider:**
 - The health and husbandry of the livestock and poultry.
 - Generally accepted farm management practices.
 - Generally accepted veterinary standards and practices.
 - Economic on livestock and poultry producers and consumers.
- **Prevent local governments from adopting rules & regulations regulating animal husbandry**
 - Reserves that power to the state commissioner of agriculture
 - Local governments may petition the commissioner of agriculture for adoption of specific standards.

Federal Attempt: Prevention of Farm Animal Cruelty Act (HR 4733- 111th Congress)

- Would apply to pregnant sows, veal calves, egg-laying hens
- Would make it unlawful to purchase products made from animals that had been prevented from lying down, standing up and fully extending limbs or turning around freely
 - Exceptions for vet care, 7 days before due date, animals involved in research, and during transportation, exhibition and slaughter
- Would become effective two years after enactment
- Would apply to federal prisons, school lunches, military purchasing- over \$1 billion annually
- Practical effect:
 - USDA purchases food from packers and processors, not from farms
 - Thus, without full traceability of every product, packers must require compliance from all their suppliers to continue selling to the government.

HSUS/UEP Agreement



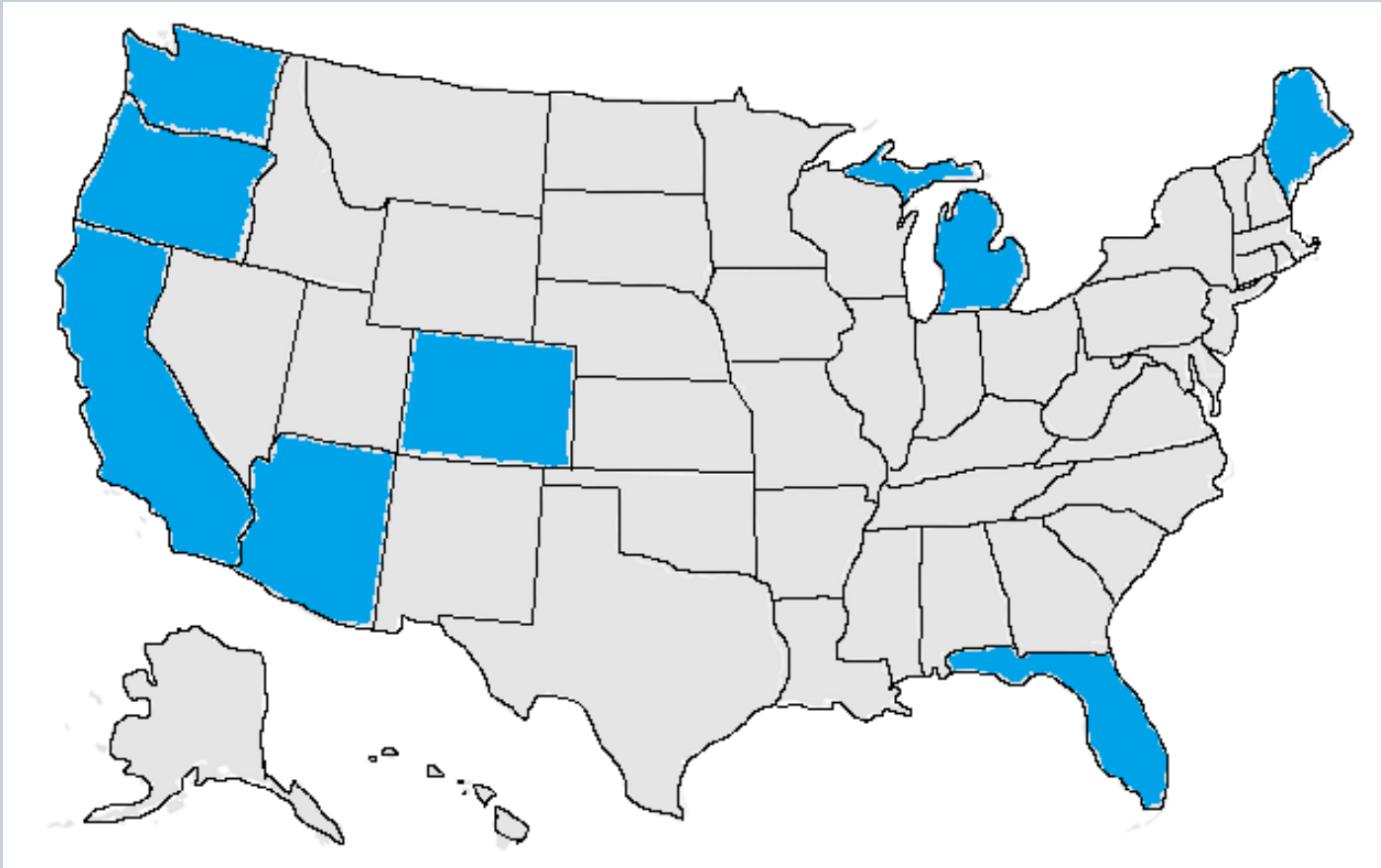
- Joint Congressional proposal that would create a national hen housing and space standard.
 - Egg Products Inspection Act Amendments of 2012 (HR 3798)
- Prohibit battery cages and implement enriched cages
 - Facilities would have 15-18 years to come into full compliance
 - New “un-enrichable” cages would be immediately prohibited
- Phase in:
 - White layers: Change from 67 sq. in. per bird to 124 sq. in.
 - Brown layers: Change from 76 sq. in. per bird to 144 sq. in.
- Also governs:
 - Air quality
 - Forced molting
 - Euthanasia
- Exemption for producers with less than 3,000 birds

Past, Present... Future?

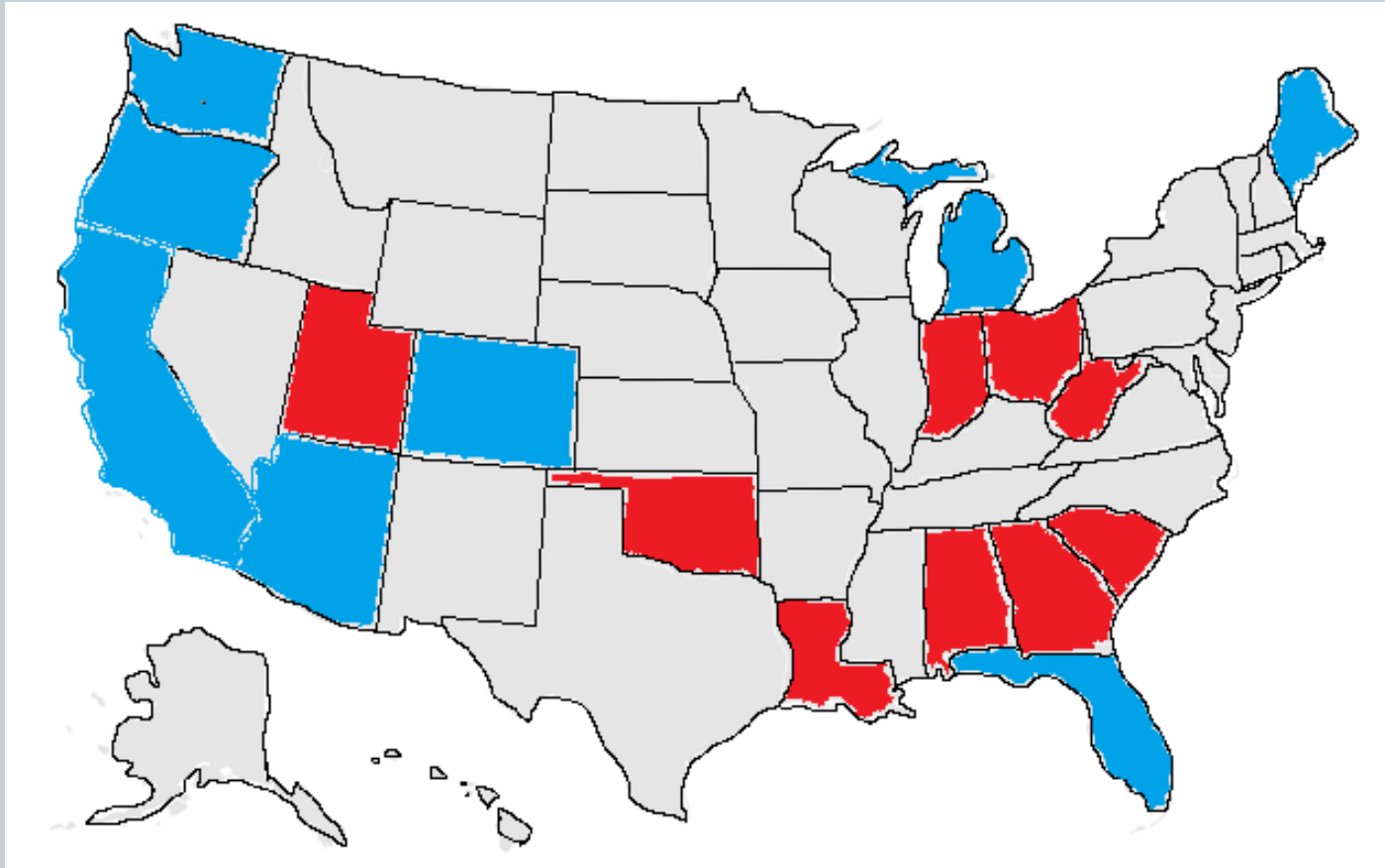


Blue:

Current
Confinement
Statutes



Past, Present... Future?



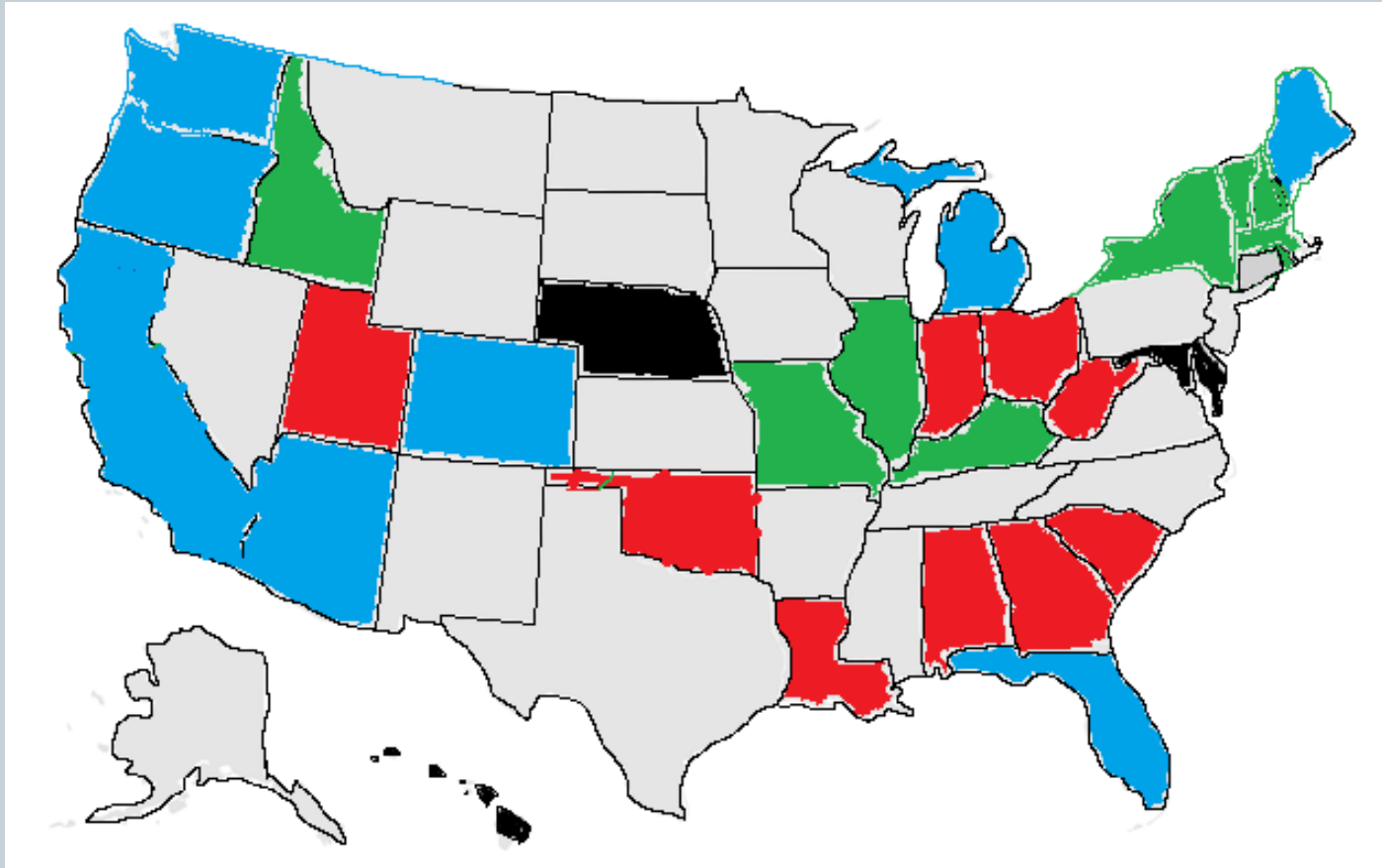
Blue:

Current
Confinement
Statutes

Red:

Ag-
Response
Statutes

Past, Present... Future?



Blue:

Current
Confinement
Statutes

Red:

Ag-
Response
Statutes

Black:

Inactive
Proposed
Legislation

Green:

Active
Proposed
Legislation

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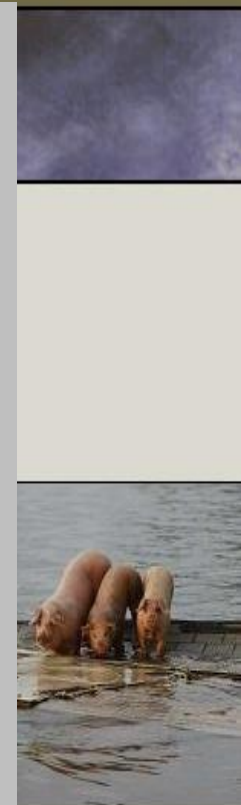


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Endangered Species Act, 16 U.S.C. §§ 1531-4
Fish and Wildlife Conservation Act, 16 U.S.C. §§ 2901-2912
Horse Protection Act, 15 U.S.C. §§ 1821-1831
Humane Slaughter Act 7 U.S.C. §§ 1901-1907





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