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THE NATIONAL AGRICULTURAL LAW CENTER

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An Overview of “Ag-Gag” Laws: *Arkansas and Beyond*

UofA

DIVISION OF AGRICULTURE

RESEARCH & EXTENSION

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About the Center



- The National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
 - Created in 1987, the NALC is a unit of the University of Arkansas System Division of Agriculture
 - The Center also works in close partnership with the USDA Agricultural Research Service, National Agricultural Library.
- We provide objective, non-partisan research and information regarding laws and regulations affecting agriculture.

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GENERAL RESOURCES		

<ul style="list-style-type: none">• Administrative Law• Agritourism• AFOs• Animal Welfare• Bankruptcy• Biotechnology• Checkoff Programs• Clean Water Act• Comm. Transactions• Conservation Programs• COOL• Crop Ins./Disaster Asst.• Environmental Law• Finance & Credit• Food Safety• Industrial Hemp• International Trade• Landowner Liability• Marketing Orders• Native American Ag• Packers and Stockyards• Pesticides• Renewable Energy• Specialty Crops• Urban Encroachment	<ul style="list-style-type: none">• Agricultural Leases• ADR• Animal Identification• Aquaculture• Biosecurity• Business Organizations• Clean Air Act• Climate Change• Commodity Programs• Cooperatives• Corporate Farming Laws• Endangered Species Act• Estate Planning & Tax• Food Labeling• Forestry• International Law & Org• Labor• Local Food Systems• Nat. Organic Program• Nutrition Programs• PACA• Production Contracts• Secured Transactions• Sustainable Agriculture• Water Law
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- Reading rooms are one of our major online resource components
- Links are provided to major statutes, regulations, case law, Center-published research articles, government publications, Congressional publications, and numerous other research resources.



Recent Resource Updates:

Video:

- Recent:
 - Practical Considerations for Hunting Leases
 - An Introduction to the Perishable Agricultural Commodities Act
 - Industrial Hemp Regulation under the 2018 Farm Bill
- Upcoming:
 - An Overview of ‘Ag-gag’ laws: In Arkansas and Beyond

Print:

- Family Law Issues in Agriculture: Factsheet Series
- Considerations for Operating Agreements
- Agriculture & the ADA: Service Animals
- Issue Brief: Potential Chapter 12 Bankruptcy Changes
- State Grain Grading Laws & Regulations
- Business Organizations Forms and Filing Information

Digital:

- Blog
- Daily update
 - A comprehensive summary of today’s judicial, legislative, and regulatory developments in agriculture and food
- Social media

Topic Areas



Early laws



Federal



Current versions



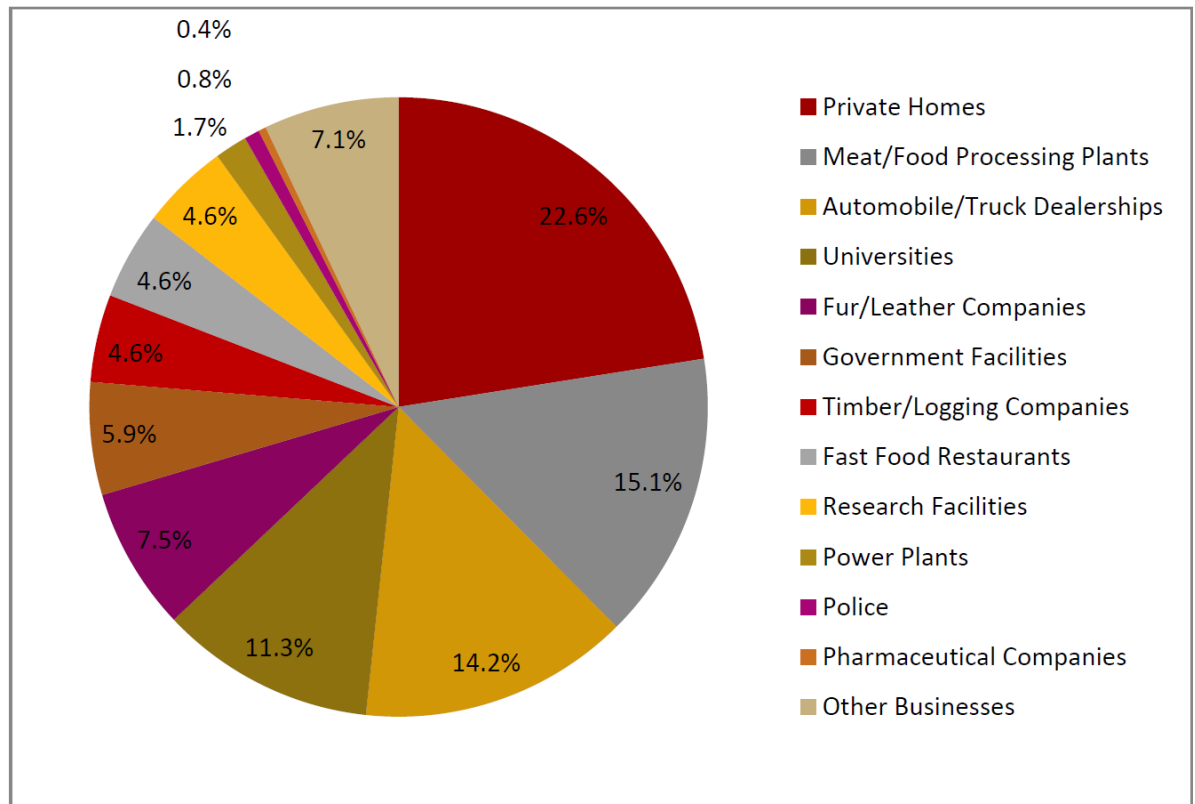
Application & challenges



Current landscape

Early versions:

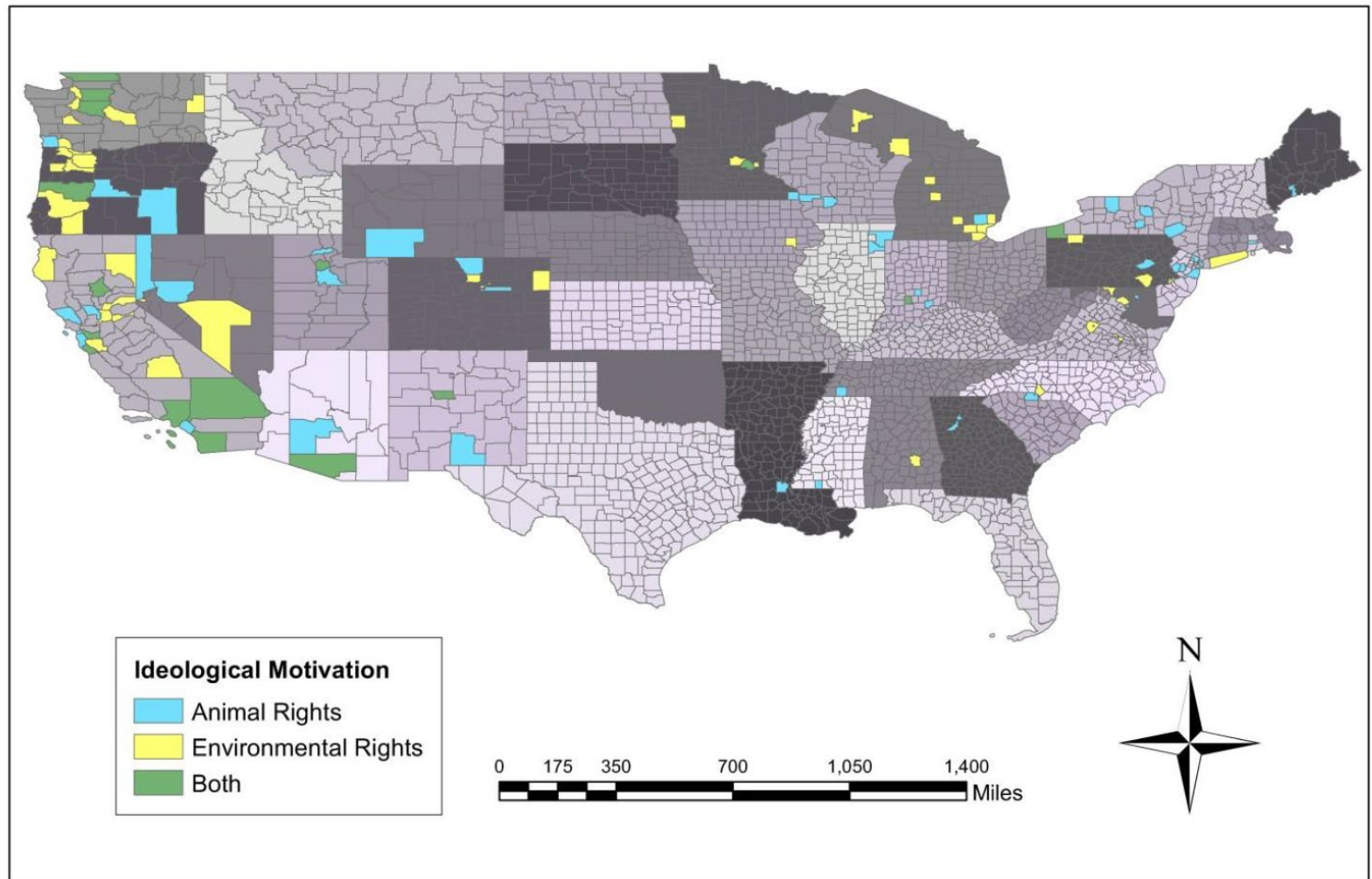
In response to terroristic acts on primarily non-farm facilities



Significant offenders: Earth Liberation Front (ELF) and Animal Liberation Front (ALF).

Between 1995 and 2010, 239 arsons/bombings committed by individuals associated with these groups
62% bombings, 38% arsons.

Figure 2. ELF and ALF Arson and Bombing Incidents across U.S. Counties



Chermak, Steven M., and Joshua Freilich, Celinet Duran, William S. Parkin. "An Overview of Bombing and Arson Attacks by Environmental and Animal Rights Extremists in the United States, 1995-2010," Final Report to the Resilient Systems Division, Science and Technology Directorate, U.S. Department of Homeland Security. College Park, MD: START, 2013. Accessed 11/12/19 at <https://bit.ly/2X6c4TF>

Kansas Statutes Ann. §47-1827 (1990)



- c) No person shall, without the effective consent of the owner and **with the intent to damage the enterprise** conducted at the animal facility:
1. Enter an animal facility, not then open to the public, **with intent to commit an act** prohibited by this section;
 2. remain **concealed**, with intent to commit an act prohibited by this section, in an animal facility;
 3. enter an animal facility and commit or attempt to commit an act prohibited by this section; or
 4. *enter an animal facility to take pictures by photograph, video camera or by any other means.*

Montana Code Ann. §81-30-103 (1991)



- 2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:
- a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;
 - b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by this chapter;
 - c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;
 - d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;
 - e) *enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation*

North Dakota § 12.1-21.1-02 (1991)



No person without the effective consent of the owner may:

1. Intentionally damage or destroy an animal facility, an animal or property in or on the animal facility, or any enterprise conducted at the animal facility.
2. Acquire or otherwise exercise control over an animal facility or an animal or other property from an animal facility with the intent to deprive the owner and to damage the enterprise conducted at the facility.
3. Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section.
4. Enter an animal facility and **remain concealed** with intent to commit an act prohibited by this section.
5. Enter an animal facility and commit or attempt to commit an act prohibited by this section.
6. Enter an animal facility and **use or attempt to use a camera, video recorder, or any other video or audio recording equipment.**
7. Intentionally turn out or release any animal in or on an animal facility.

Topic Areas



- ✓ Early laws
- ✓ Federal
- Current versions
- Application & challenges
- Current landscape

Animal Enterprise Terrorism Act [18 U.S.C. §43](#)



- Interstate commerce/mail requirement
 - for the purpose of damaging or interfering with the operations of an animal enterprise; and
 - ✦ “intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;”
 - ✦ intentionally places a person in reasonable fear of the injury or death of themselves or a loved one
 - ✦ conspires or attempts to do so
- Nothing in this section shall be construed—
 - to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;
 - to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed, or to limit any existing legal remedies for such interference; or
 - to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this action, or to preempt State or local laws that may provide such penalties or remedies.

Topic Areas



Early laws



Federal



Current versions

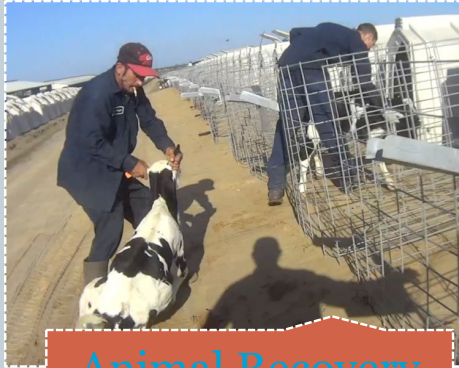


Application & challenges



Current landscape

Undercover Operations



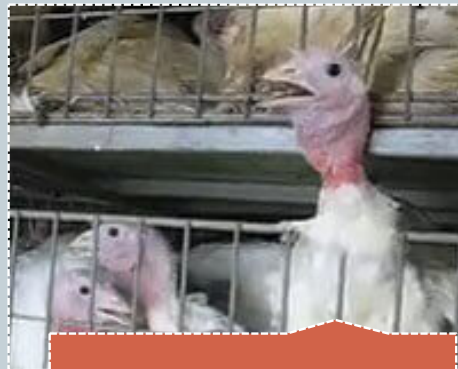
Animal Recovery Mission



Humane Society of the United States



Mercy for Animals



PETA



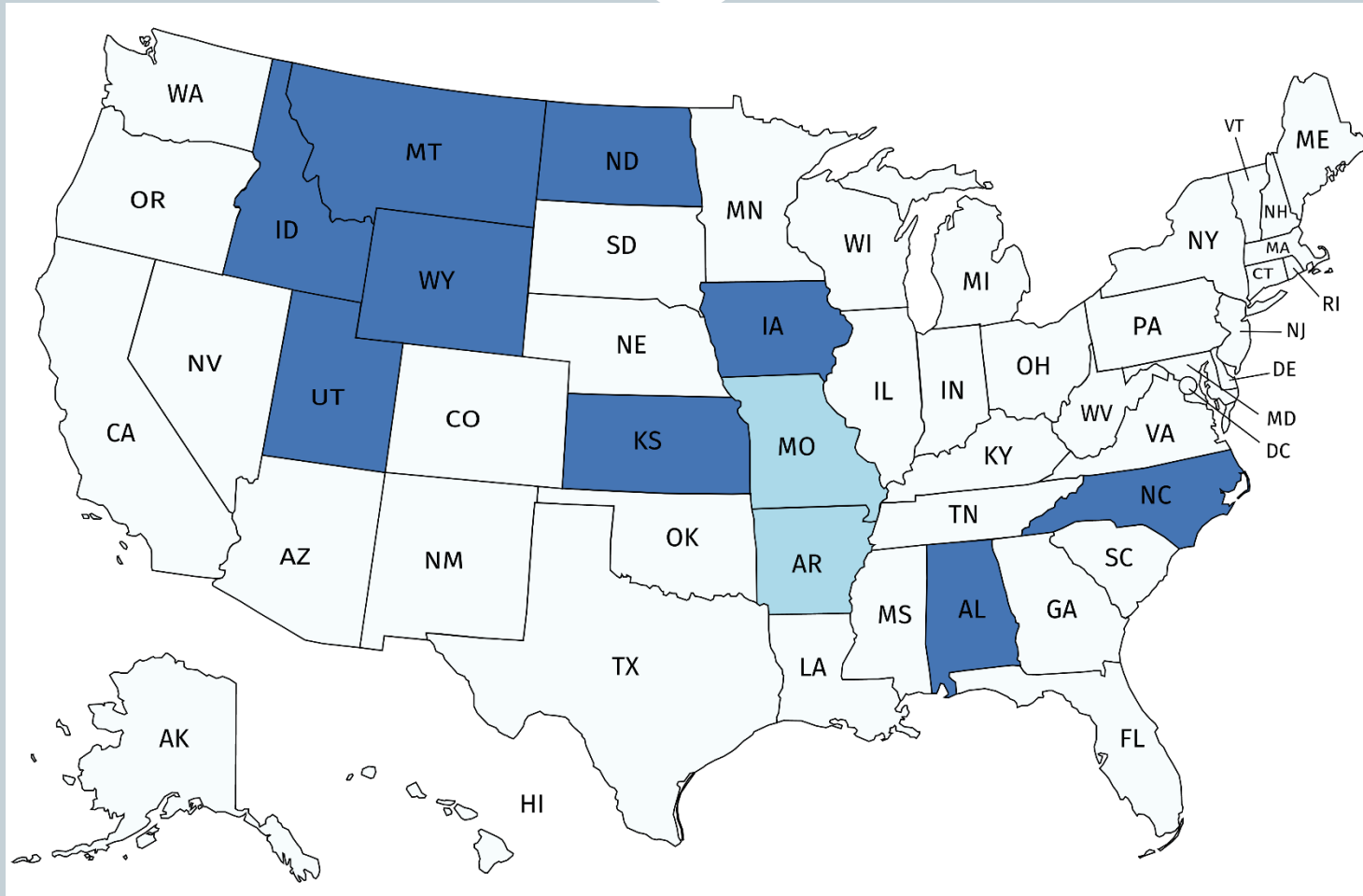
Compassion over Killing

Current Versions



- Each state is unique, but many similar components
- Common elements
 - Trespass in agricultural facilities
 - Prohibition on filming/distribution of agricultural activities
 - Employment fraud: false info/intentions
 - Delayed reporting of animal abuse
 - Liability for co-conspirators

Element: Trespass



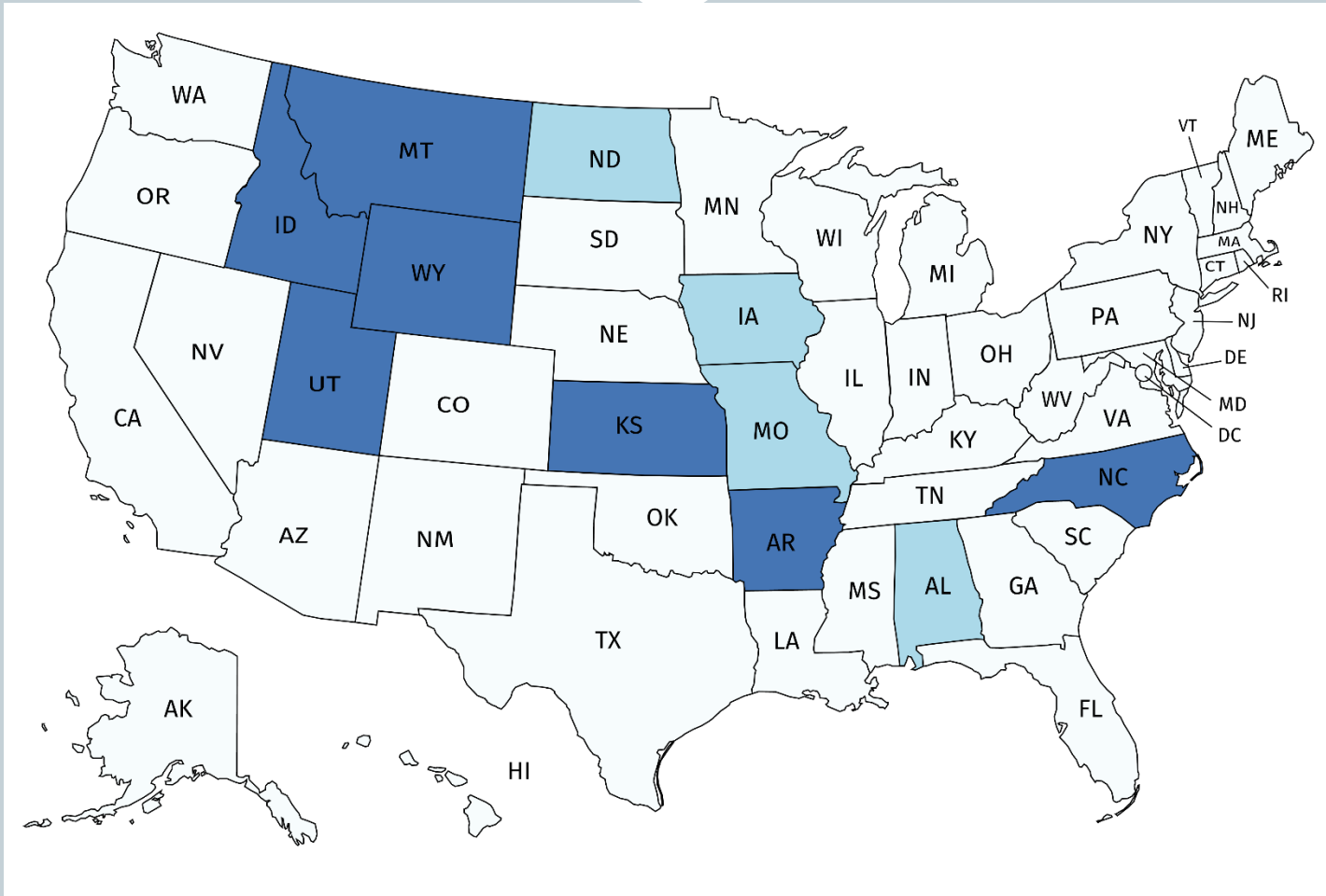
Example: Trespass



- (1) A person commits the crime of interference with agricultural production if the person knowingly[...]
 - d) Enters an agricultural production facility that is not open to the public and, without the facility owner's express consent or pursuant to judicial process or statutory authorization, makes audio or video recordings of the conduct of an agricultural production facility's operations; or ...

Idaho Code §18-7042 (2014)

Element: Filming/distribution



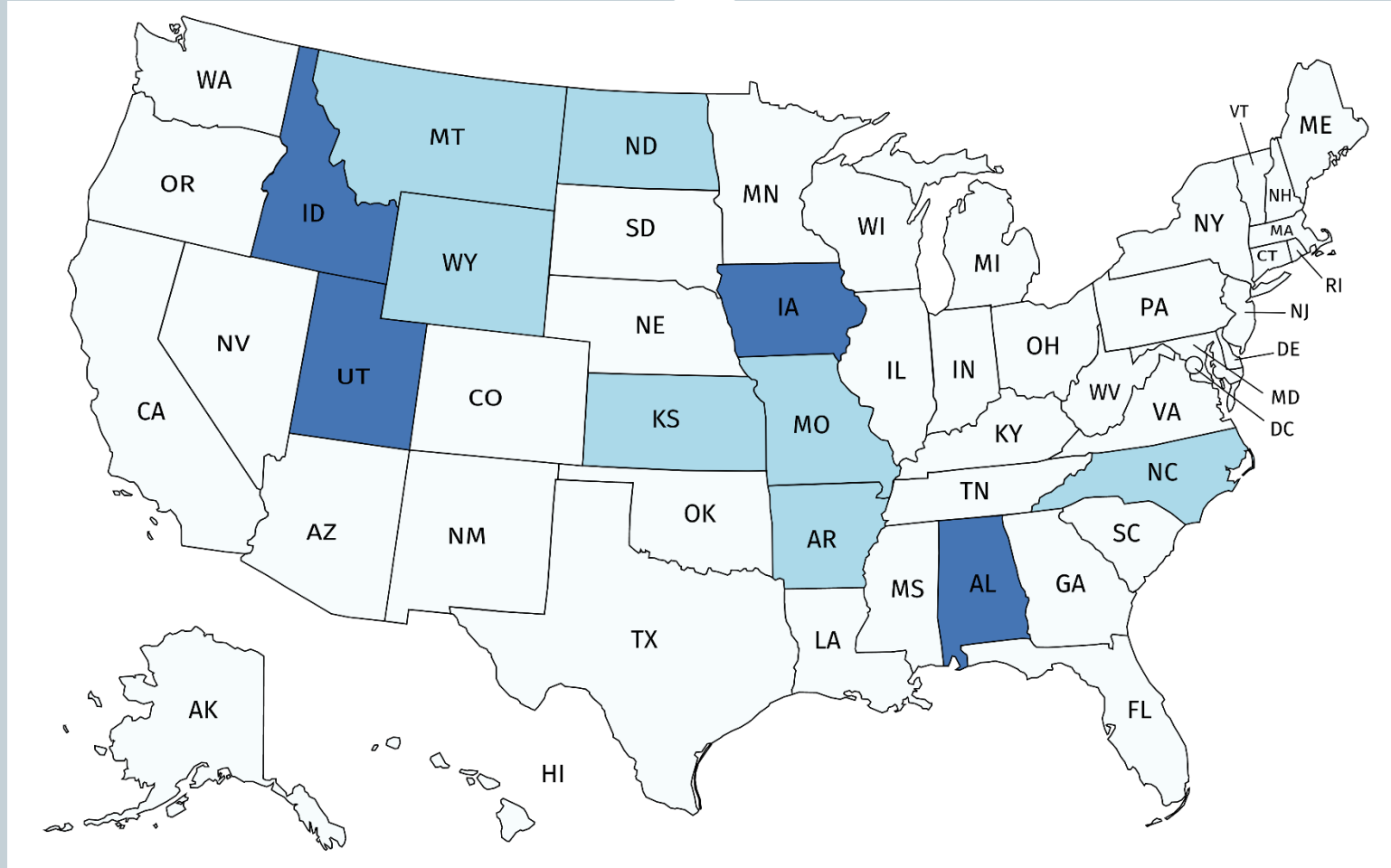
Example: Filming/distribution



- Unlawful to enter onto or cross private open land without permission for “the purpose of collecting resource data”
 - "Resource data" means data relating to land or land use, including but not limited to data regarding agriculture, minerals, geology, history, cultural artifacts, archeology, air, water, soil, conservation, habitat, vegetation or animal species.

Wyo Stat §6-3-414

Element: Employment Fraud



Example: Seeking employment to record



- A person is guilty of agricultural production facility fraud if the person willfully...:
 - a) **Obtains access** to an agricultural production facility by **false pretenses**.
 - b) Makes a **false statement or representation** as part of an **application or agreement to be employed...** with an intent to commit an act not authorized by the owner of the agricultural production facility

Iowa Code Annotated § 717A.3A (2012)

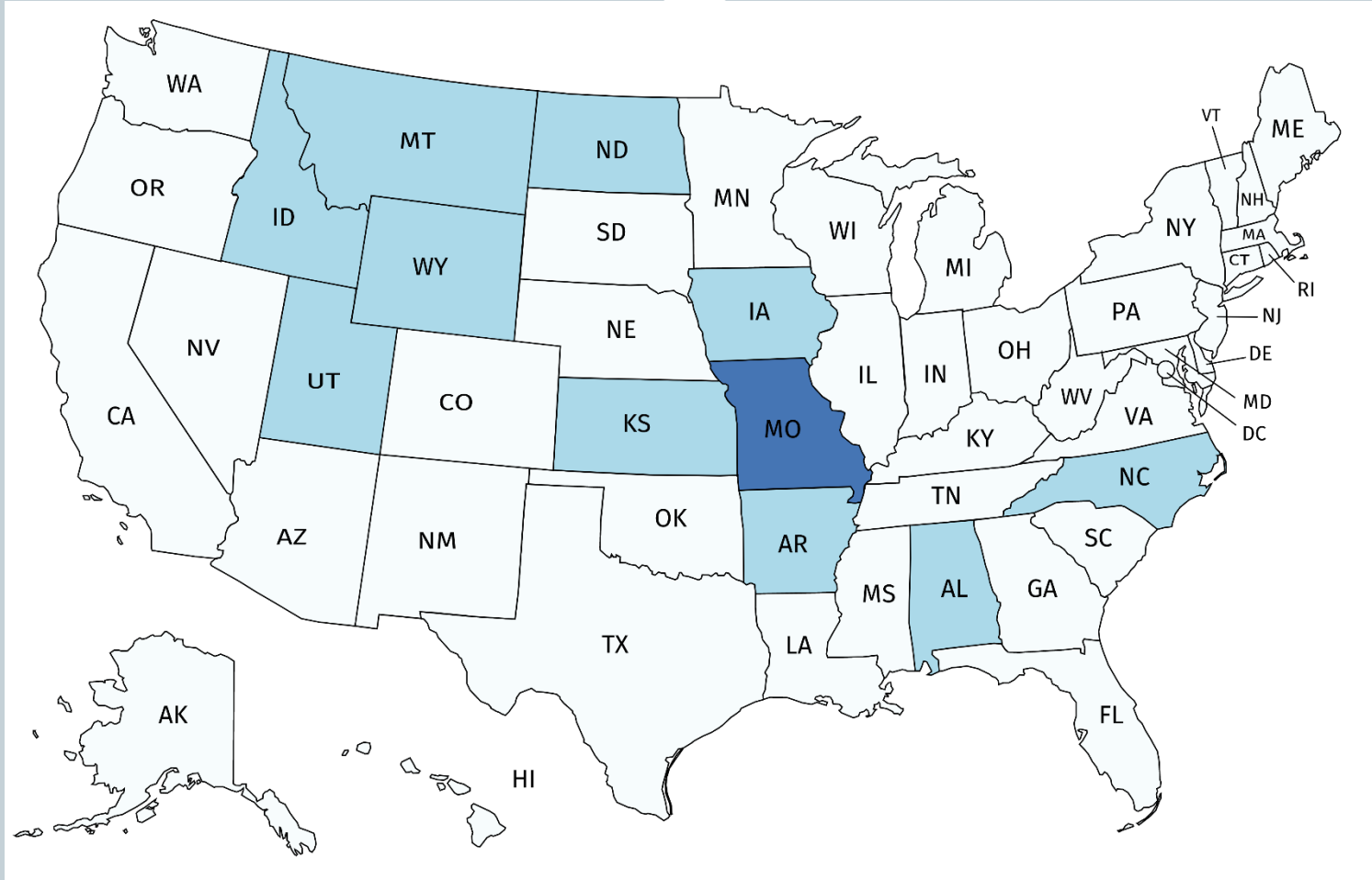
Example: Seeking Employment with False Info



- (1) ..."agricultural operation" means private property used for the production of livestock, poultry, livestock products, or poultry products.
- (2) A person is guilty of agricultural operation interference if [...]
 - (b) obtains access to an agricultural operation under false pretenses;
 - (c) (i) applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;...

Utah Code § 76-6-112 (2012)

Element: Delayed Reporting



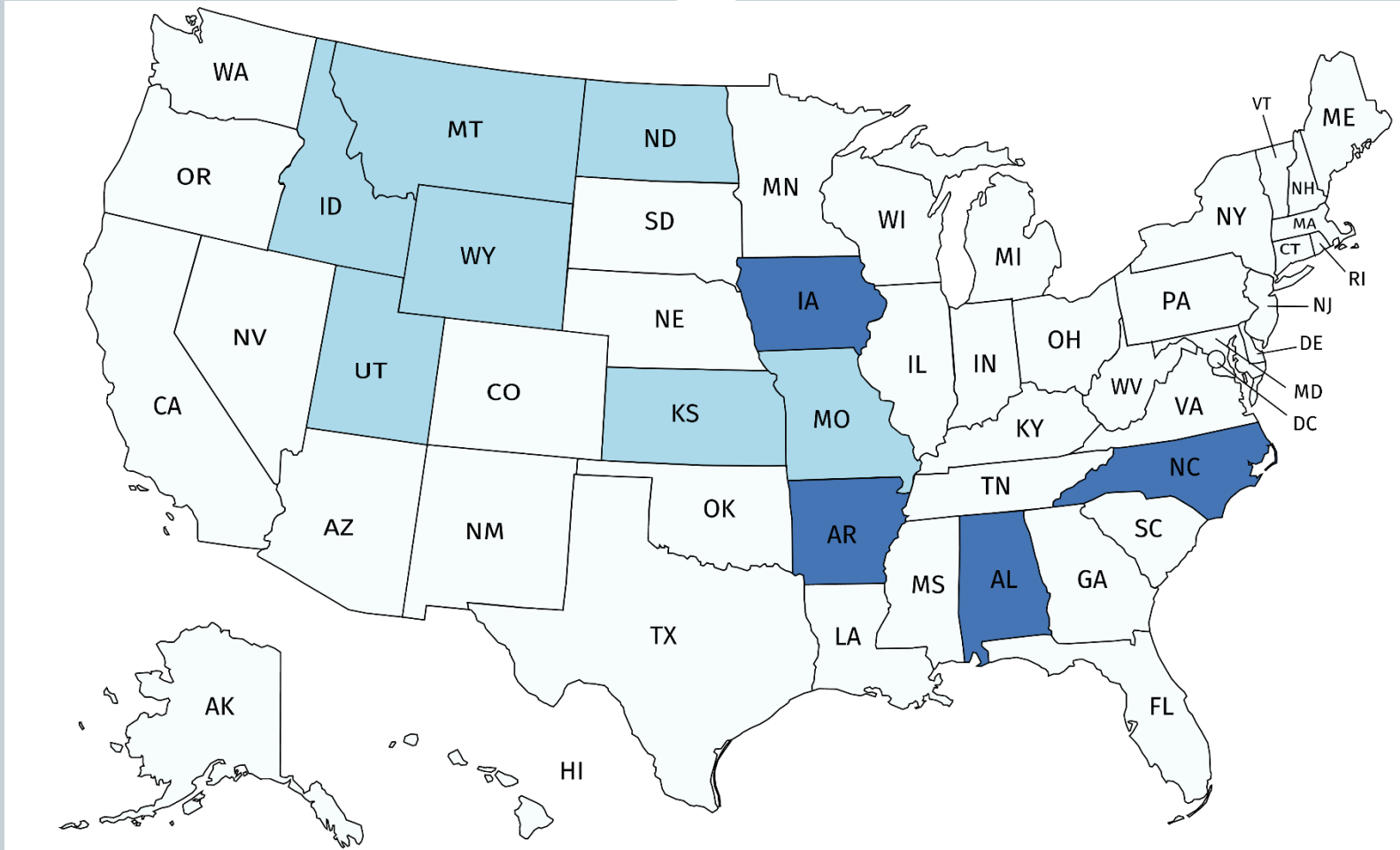
Example: Delayed Reporting



- Whenever any farm animal professional videotapes or otherwise makes a digital recording of what he or she believes to depict a farm animal subjected to abuse or neglect ... such farm animal professional shall have a duty to submit such videotape or digital recording to a law enforcement agency within twenty-four hours of the recording.
- No videotape or digital recording submitted under subsection of this section shall be spliced, edited, or manipulated in any way prior to its submission.

Missouri Statutes Annotated §578.013 (2012)

Element: Co-Conspirators



Example: Co-Conspirators



- It shall be unlawful for any person to do any of the following
 - Possess or use records, materials, data, equipment, crops, or animals in any way to copy or reproduce records or data of an animal or crop facility *knowing or reasonably believing that the records, materials, data, equipment, crops, or animals have been obtained by theft or deception, or without authorization of the rightful owners or administrators of the animal or crop facility*

Ala. Code § 13A-11-150 - 158

Topic Areas



Early laws



Federal



Current versions



Application & challenges



Current landscape

Prosecution Under Utah's Law

- February, 2013:
 - Amy Meyer began recording conditions from the sidewalk outside a slaughterhouse.
 - She refused to leave, stating that she was on public property and had the right to film.
 - She was charged with “agricultural operation interference” under Utah’s “ag-gag law”
- May, 2013:
 - Prosecutors dropped charges after analyzing video evidence that confirmed Meyer had filmed from public property.
- September, 2014:
 - Four members of the “Farm Animal Rights Movement” tried to document the journey of a truckload of hogs from the farm to a slaughterhouse.
 - In doing so, they allegedly drove onto/filmed on private land.
 - Charged with ag operation interference and criminal trespass
- January, 2015:
 - Ag operation interference charges were dropped at farm’s request.

Primary Reasons for Challenges



- **First amendment:**
 - “Congress shall make no law... abridging the freedom of speech”
 - ✦ Requires gov to have important reasons for making laws
 - Intermediate/strict scrutiny
- **Secondary arguments:**
 - Overly broad
 - Constitutes content-based discrimination
 - Violates animal protection groups’ equal protection and due process

Successful Challenges



- When/Where:

- [Idaho](#) (2013)
- [Utah](#) (2014)
- [Wyoming](#) (2015)
 - ✦ Entering “open land for the purpose of collecting resource data”
- [Iowa](#) (2017)

- Ruling:

- ✦ Idaho
 - [Animal Legal Defense Fund v. Otter](#), 118 F. Supp.3d 1195 (S.D. Idaho, 2015)
 - [Animal Legal Defense Fund v. Wasden](#) 878 F.3d 1184 (9th Cir, 2018)
- ✦ Utah
 - [Animal Legal Defense Fund v. Herbert](#) 263 F. Supp. 3d 1193 (2017)
- ✦ Wyoming
 - [Western Watersheds Project v. Michael](#) 353 F.Supp.3d 1176 (2018)
- ✦ Iowa
 - [Animal Legal Defense Fund v. Reynolds](#), 4:17-CV-00362 (S.D. Iowa, 2019)

Note on Iowa's Challenge



- Decision on 2/14/19
- Ruling:
 - Iowa Code § 717A.3A violates the First Amendment to the United States Constitution and is therefore facially unconstitutional.
 - The state of Iowa is permanently enjoined from enforcing Iowa Code § 717A.3A as currently drafted.
 - Plaintiff's due process claim is moot because of the above decisions.
 - Plaintiffs may seek an award of attorney fees and costs
- Legal fees of \$181,623.13 awarded 4/16/19
- Appeal pending in 8th Circuit.

Topic Areas



Early laws



Federal



Current versions



Application & challenges



Current landscape

N.C.G.S.A. § 99A-1, 2 (2016)



- Prohibits whistleblowing in private businesses, which may include agricultural facilities, hospitals, elder care facilities, and schools
- Allows an employer to sue an employee who goes into non-public areas and “captures or removes” documents from the premises or records images or sound, and then uses those materials “to breach the employee’s duty of loyalty to the employer,
- Potential remedies:
 - Equitable relief.
 - Compensatory damages
 - Costs and fees, including reasonable attorneys' fees.
 - Exemplary damages as otherwise allowed by State or federal law in the amount of five thousand dollars (\$5,000) for each day, or portion thereof, that a defendant has acted in violation

North Carolina



- **January 2016**
 - Law became effective
 - Law challenged in United States District Court, Middle District of North Carolina
 - ✦ People for the Ethical Treatment of Animals, Inc et al. v. Roy Cooper et.al 1:16-cv-00025-TDS-JEP
- **December 2018:**
 - Court dx state constitutional claims
 - Court denied motion to dismiss federal claims
- **Currently:**
 - Cross-motions for summary judgment pending

Kansas Statutes Ann. §47-1825 – 1830, 1827 (1990)



- c) No person shall, without the effective consent of the owner and **with the intent to damage the enterprise** conducted at the animal facility:
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 2. remain **concealed**, with intent to commit an act prohibited by this section, in an animal facility;
 3. enter an animal facility and commit or attempt to commit an act prohibited by this section; or
 4. *enter an animal facility to take pictures by photograph, video camera or by any other means.*

Kansas



- Farm Animal and Field Crop and Research Facilities Protection Act (1990).
- Challenged in United States District Court, District of Kansas, on 12/4/18
 - Animal Legal Defense Fund et al. v. Laura Kelly, et al., Case 2:18-cv-02657-KHV
- Currently:
 - Cross-motions for summary judgment are pending; responses were due 10/15/19.
 - Trial set for 5/5/2020

Iowa Code Ann. § 717A.3B (2019)



- **Agricultural production facility trespass =**
 - Using deception to gain access to an agricultural production facility that is not open to the public, with the intent to cause physical or economic harm.
 - Uses deception to gain employment at an agricultural production facility that is not open to the public, with the intent to cause physical or economic harm
- **Penalty for commission or conspiracy to commit:**
 - First offense = serious misdemeanor
 - ✦ Penalty: <1 yr; between \$315 - \$1875
 - Subsequent offense = aggravated misdemeanor
 - ✦ Penalty: <2 yr; between \$625 - \$6250

Iowa



- **March 6-14, 2019:**
 - Bill proposed, passed House and Senate, signed by Governor
- **April 22, 2019**
 - Challenge filed in United States District Court, Southern District of Iowa
 - ✦ Animal Legal Defense Fund et al v. Reynolds et al 4:19-cv-00124-JEG-HCA
- **Currently:**
 - Pending cross motions to dismiss/for summary judgment

Ark. Code Ann. § 16-118-113 (2017)



- Applies to businesses, ag operations and residential property used for business purposes
- Imposes civil liability for knowingly gaining access to nonpublic areas and engaging in acts that exceed the person's authority to enter the nonpublic area.
 - Examples: knowingly entering a nonpublic area and without authorization subsequently:
 - ✦ Capturing or removing information and using it to damage the employer
 - ✦ Recording images or sound occurring within the property and using it to damage the employer
 - ✦ Using an unattended electronic surveillance device to record images/data for an unlawful purpose;
 - ✦ Conspiring in an organized theft of items belonging to the employer; or
 - ✦ Committing an act substantially interfering with the ownership or possession of commercial property.
- A person who knowingly directs or assists another person to violate this section is jointly liable.
- Penalties (civil)
 - Equitable relief;
 - Compensatory damages;
 - Costs and fees, including reasonable attorney's fees; and
 - If compensatory damages cannot be determined, a court may award damages commensurate with the harm caused, up to \$5000 for each day in violation

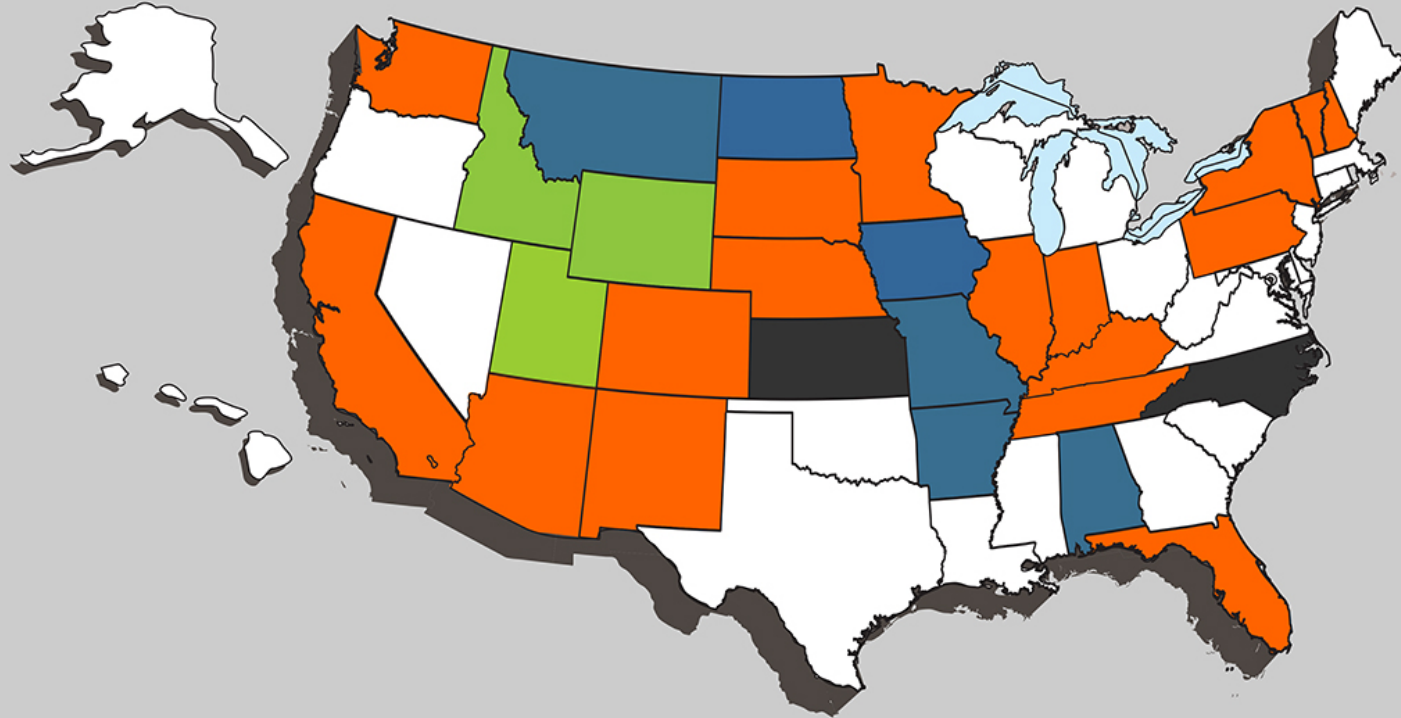
Arkansas





- **March 23, 2017**
 - Law signed into law/becomes effective
- **June 25, 2019**
 - Challenge filed in United States District Court, Eastern District of Arkansas
 - ✦ Animal Legal Defense Fund et al., v. Jonathan and DeAnn Vaught et al., 4:19-CV-442-JM
- **Currently pending:**
 - ✦ Defendant: motion to dismiss
 - ✦ Plaintiff: request for injunction

State Anti-Whistleblower Laws

The "Ag-Gag" Landscape as of June 2019



 Ag-Gag Ruled Unconstitutional

 Ag-Gag Passed (Farm whistleblowing criminalized)

 Ag-Gag Defeated

 Ag-Gag Litigation Pending

#OpenTheBarns

Source of map: <https://bit.ly/2Qck1VV>

With Iowa's ag-gag law ruled unconstitutional, animal rights group seeks undercover investigator

Donnelle Eller, Des Moines Register Published 2:21 p.m. CT Jan. 18, 2019



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About a week after Iowa's ag-gag law was struck down over free speech violations, a national animal rights group is advertising for an investigator to work undercover in Iowa livestock and meat processing facilities.

Mercy For Animals, a Los Angeles animal welfare group, is advertising online for an Iowa-based [undercover investigator](#) to work at "factory farms, hatcheries, livestock markets and slaughterhouses" to catch possible animal abuse.

The California group said it routinely advertises for undercover investigators, and didn't

Des Moines Register 1/18/19: <https://bit.ly/34Yi5Em>



Contact Information:



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