ANIMAL WELFARE INSTITUTE

Enforcement of State Farmed Animal Welfare Laws

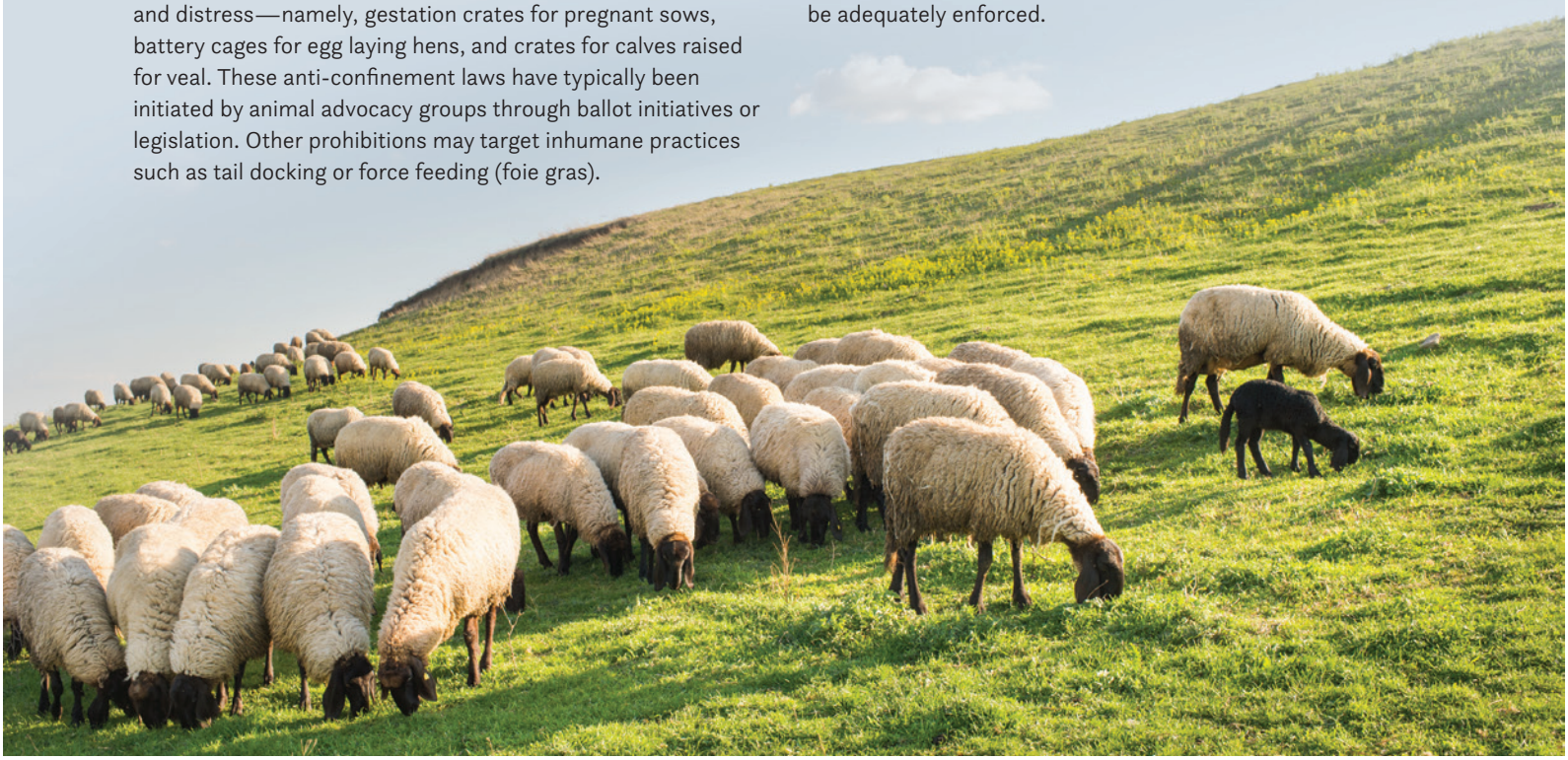
At the federal level in the United States, legal protections for farmed animals—those raised for agricultural purposes—are limited to transport duration, handling at slaughter, and on-farm housing and handling of animals raised organically. On-farm protections for animals raised non-organically (the vast majority) are limited to a patchwork of state laws that vary significantly in the level of protection and species protected. These laws generally fall into three categories: (1) minimum animal care standards, (2) prohibitions on specific conventional industry practices, and (3) bans on the sale of products derived from production systems that involve those industry practices.

Minimum animal care standards set basic guidelines for the treatment of animals on farms—typically only requiring basic food, water, shelter, and veterinary care. These standards are developed, revised, and implemented by state departments of agriculture or state livestock care standards boards, which are established through state legislation and typically comprise appointed officials from a variety of backgrounds, including local government officials, farmers, veterinarians, members of the public, and humane groups. Enforcement of these standards falls to various authorities, including state departments of agriculture or law enforcement officials and district attorneys.

Prohibitions on specific conventional industry practices include laws against extreme confinement practices that cause pain and distress—namely, gestation crates for pregnant sows, battery cages for egg laying hens, and crates for calves raised for veal. These anti-confinement laws have typically been initiated by animal advocacy groups through ballot initiatives or legislation. Other prohibitions may target inhumane practices such as tail docking or force feeding (foie gras).

Several states have now passed bans on the sale of animal products—eggs, whole pork, veal, and foie gras—derived from conventional production systems that involve the inhumane practices mentioned above. Because these laws necessarily reach products originating outside of the implementing state's border, they have greater implications for interstate commerce, and have been the subject of contentious litigation for many years.

Animal advocates have spent significant resources and time to convince state legislators, regulators, and citizens (in the case of ballot measures) to enact laws to improve the welfare of farmed animals. How protective these laws end up being cannot be known at the time of passage. Most of the laws and regulations discussed below do not go into effect until years after their adoption—usually to give producers time to adjust their practices. In many cases, the language of statutes is intentionally broad; significant details are left to be fleshed out later by state agencies in regulations. In some cases, agencies have declined to issue regulations or use their enforcement power. Once the provisions are in place, therefore, it is important to investigate how the state has carried out its mandate under the law, to ensure that the hard-won protections that result from these efforts are not undermined in the implementation process, and that future laws are drafted in a way that maximizes the chances they will be adequately enforced.



Enforcement of State Farmed Animal Protection Laws

STATE	TYPE OF PROTECTION	YEAR(S) EFFECTIVE**	HOW ENACTED	EVIDENCE OF STATE ENFORCEMENT?
Alaska	Animal care standard	2017	Legislation/regulation	Yes
Arizona	Gestation crate ban	2013	Ballot measure	No
	Veal calf crate ban	2013	Ballot measure	No
	Hen housing standards*	2009/2022	Legislation/regulation	No
	Caged egg product sales ban	2022–2025	Regulation	Yes
California	Gestation crate ban*	2015/2021–24	Ballot measure	No
	Veal calf crate ban	2015/2021	Ballot measure	No
	Hen housing standards	2015/2021	Ballot measure	No
	Cattle tail docking ban	2010	Legislation	No
	Caged egg product sales ban*	2015/2021	Legislation	Yes
	Veal sales ban	2019–24	Ballot measure	No
	Pork sales ban	2021–24	Ballot measure	No
	Foie gras sales ban	2012	Legislation	No
Colorado	Gestation crate ban	2018	Legislation	No
	Veal calf crate ban	2012	Legislation	No
	Hen housing standards	2023–2025	Legislation	Yes
	Caged egg product sales ban	2023–2025	Legislation	Yes
Florida	Gestation crate ban	2008	Ballot measure	No
Indiana	Animal care standards	2011	Legislation/regulation	Yes
Kentucky	Animal care standards	2014	Legislation/regulation	No
	Veal calf crate ban	2018	Regulation	No
Louisiana	Animal care standards	2013	Legislation/regulation	No
Maine	Gestation crate/veal crate ban	2011	Legislation	No
	Hen housing standards	2010	Nonbinding legislation	No
Massachusetts	Gestation crate/veal crate ban/ hen housing standards	2022	Ballot measure	No
	Veal sales ban	2022	Ballot measure	No
	Caged egg product sales ban	2022	Ballot measure	Yes
Michigan	Veal calf crate ban	2012	Legislation	No
	Gestation crate ban	2020	Legislation	No

New Jersey	Animal care standards	2011	Legislation/regulation	Yes
	Routine tail docking ban	2011	Regulation	No
Nevada	Hen housing standards	2022–2024	Legislation	No
	Caged egg product sales ban	2022–2024	Nonbinding legislation	No
Ohio	Animal care standards	2011	Legislation/regulation	Yes
	Veal calf crate limitations	2018	Regulation	No
	Tail docking ban	2011	Regulation	Yes
Oregon	Gestation crate ban	2012	Legislation	No
	Hen housing standards	2012	Legislation/regulation	No
Rhode Island	Gestation crate ban	2013	Legislation/regulation	No
	Veal calf crate ban	2013	Legislation/regulation	No
	Cattle tail docking ban	2012	Legislation/regulation	No
	Animal care standards	2014	Legislation/regulation	Yes
Washington	Hen housing standards*	2012/2024	Legislation	No
West Virginia	Animal care standards	2015	Legislation/regulation	Yes

**Statute and requirements were modified during the survey period. **Years separated by a slash indicate multiple laws enacted on this type of protection. Years separated by a dash indicate a phase-in period for a single law.*

The Survey

In 2019, the Animal Welfare Institute (AWI) conducted a first-of-its-kind survey of state agencies to assess whether, and to what extent, 16 states with farmed-animal-specific protection laws enforced them. Covering the time between the effective date of each law and August 2019, the survey revealed varying levels of enforcement activities and transparency across states. Some states provided evidence of enforcement, while others responded with limited records or indicated a lack of information regarding the enforcement of these laws.

Since the original survey, new farmed animal protection laws and regulations have come into effect in Arizona, California, Colorado, Massachusetts, Michigan, and Nevada. The addition of Massachusetts and Nevada increased the number of states with these laws from 16 to 18. The most significant changes included California's and Massachusetts's sales bans on animal products derived from animals subjected to extreme confinement.

AWI again submitted records requests to every state with laws specifically protecting farmed animals as of early 2023.[1] In general, AWI requested records from September 2019 (the end of the last survey period) through February 2023. The first two months of 2023 were included in the request in order to capture any initial enforcement activity for the few laws that went into effect at the start of 2023. In some cases, the state sent records for a narrower time period than was requested.

Of the 44 state laws and regulations establishing protections for farmed animals, AWI received records of enforcement for 12. As with the last survey, minimum animal care standards had the most evidence of consistent enforcement. Below, after a brief overview of each state's laws and regulations and the evidence provided of enforcement, possible reasons for the dearth of records of enforcement are discussed, followed by a discussion of how future protections can be crafted to maximize the potential for enforcement.

ALASKA[2]

The Alaska legislature directed the state's Department of Environmental Conservation (DEC) to adopt rules establishing minimum basic care standards for animals in 2004. The rules went into effect in 2017 and cover dogs, horses, pigs, cattle, and other ruminants. The law allows complaints to be submitted to the DEC, animal control, or local law enforcement; but only law enforcement is granted investigatory authority. The DEC or a court can impose fines for violations.

The records received from the DEC's Division of Agriculture were in the form of email chains indicating that (as noted in the last survey report) the state has no established formal process to receive or track complaints. Emails showed that the division received 10 inquiries/complaints between August 2019 and February 2023 from private citizens and employees of other state agencies. Six of the complaints involved the keeping of dogs. The remaining four complaints related to concerns about living conditions of individual or small groups of reindeer, elk, horses, bison, and cattle. In all cases, the complainant was directed to contact local law enforcement and told that the division would consult if needed. In one incident, a Department of Fish and Game wildlife biologist contacted the Division of Agriculture to report that he had received complaints about a privately owned herd of elk and bison that were being kept in poor physical condition. The biologist indicated that he had contacted the Department of Natural Resources several times over a four-month period and referred the case to local law enforcement and state troopers, with no result. The records did not contain any information on the outcome of any of the complaints.

ARIZONA[3]

Citizens of Arizona prohibited the use of gestation crates for sows and crates for veal calves via ballot measure in 2006. The prohibition is codified in the state criminal code and went into effect in 2014. As with the last survey, there were no records related to the enforcement of the gestation and veal crate prohibition, as the Department of Agriculture is not charged with enforcing those provisions.

In 2008, the legislature directed the department to develop consistent husbandry practices for egg-laying hens, which it did by mandating compliance with the general animal care guidelines of the United Egg Producers (UEP) trade association. In 2022, however, responding to the rising number of "cage free" egg laws enacted by other state legislatures, the department adopted a rule that phased in a cage-free requirement for eggs produced and sold in the state. As of October 2022, all eggs sold in the state must be from hens housed according to UEP requirements and given at least one square foot of usable floor space per hen. Beginning January 2025, all eggs must be from facilities meeting the UEP cage-free guidelines. The department enforces the sales bans via its egg inspection authority, and egg lots sold in the state must be accompanied by "documentation from a government or private third-party inspection and continuous process verification service."

State records suggest that laws establishing minimum animal care standards are more consistently enforced than other state animal protection measures. Most minimum care standard investigations involved small-scale backyard or hobby producers, however.

Regarding in-state producers, a records officer informed AWI that the standards "are enforced at the producer level and the Department did not have any violations of the standards observed during our inspections." The department did not specify the authority or regulatory provision under which these inspections are being conducted.

The department released records of enforcement of the state's egg sale requirements that showed it issued 30 hold tags on lots of egg products set to be sold in the state for lack of proof of compliance. Of these, 23 tags were withdrawn (allowing for sale of the eggs) after the producer provided proof of compliance from third-party certifiers (UEP, American Humane Certified, and Certified Humane). Four sets were released because the eggs were packaged prior to the effective date of the law, two sets were destroyed on location, and the final set was returned to the producer. Two additional hold tags were issued even though proof of compliance was provided because one producer was not registered with the department and the other had inadvertently used the wrong plant code. Both sets of eggs were subsequently released for sale.

CALIFORNIA[4]

California has enacted the highest number of legal protections for farmed animals. In 2018, California voters passed Proposition (Prop) 12, which amended existing anti-confinement laws to establish minimum space requirements

for calves raised for veal, breeding sows, and egg-laying hens in California. Prop 12 also prohibited the sale of veal, pork, and eggs from animals raised in intensive confinement anywhere. Prop 12, like all of California's farmed animal protection laws, has been the subject of extensive litigation. Consequently, the California Department of Food and Agriculture (CDFA), which is tasked with enforcing the law, didn't finalize regulations enforcing Prop 12 until September 2022.

The CDFA established a new Animal Care Division to implement the regulations, which require both producers and distributors of covered animal products in the state to be registered with the department. To register, applicants must provide documentation that a certified agent has conducted an on-site inspection of each production unit or facility of an operation that is producing or distributing covered animals or products. The regulations are complex—due in part to litigation challenging Prop 12—and involve phase-in periods spanning from 2020 to 2024. At the time of this survey, CDFA regulations allowed distributors of covered products to "self-certify" that they comply with all requirements and were permitted to do so until January 1, 2024.

The CDFA's legal office informed AWI that it was withholding records of one ongoing investigation into a violation of the Prop 12 egg regulations, but otherwise had no records related to enforcement actions taken for either Prop 12 or the state's foie gras ban. The state's prohibition on tail docking of dairy cattle is contained within the California Penal Code; for matters covered under this section of the California Code, it is not possible to submit a blanket request for all records pertaining to any enforcement actions that may have occurred within a particular time period. The California Department of Justice informed AWI that it could search for and release statistical or aggregate data detailing counts of arrests and convictions for violations of the tail docking statute. However, AWI withdrew the request after the department quoted over $1,000 in fees to generate the data, which it could not confirm existed.

COLORADO[5]

Colorado has prohibited the use of gestation and veal crates within the state since 2012. These prohibitions are contained in the agricultural code. Violation of either prohibition is a misdemeanor criminal offense, but in both cases the statute provides no enforcement mechanism or audit procedure. Therefore, it is unsurprising that no responsive records were returned for this survey or the previous one.

In 2020, Colorado passed a new law that phases out the in-state production or sale of eggs from hens not housed in a cage-free environment by 2025. As of January 2023, hens producing eggs for sale in Colorado must be provided with at least one square foot of living space per hen. To ensure compliance, the regulations adopted by the Department of Agriculture require producers whose eggs will be sold in the state to obtain a certificate of compliance. The certificate application requires producers to submit information about their production, including the number of hens, the specific enclosure system, the number and size of enclosures, and the maximum number of hens to be housed, as well as proof of an audit from an approved accreditor (including any third-party certification) confirming adherence to the housing requirements. Businesses that sell eggs are required to obtain and keep on hand a copy of their supplying farms' certificates of compliance.

Colorado's records officer indicated that the department had received 154 applications and had issued 75 certificates of compliance thus far, but did not specify how many of these were from in-state or out-of-state producers. AWI requested all applications and certificates of compliance; however, the request was withdrawn after the records officer stated that most of the information, including production and audit details, was considered confidential commercial data and would be redacted.

FLORIDA[6]

Florida passed a constitutional amendment banning the use of sow gestation crates in 2002 that went into effect in 2008. State law enforcement officers are authorized to enforce the provision, and violations are punishable as a misdemeanor. Neither the Department of Agriculture and Consumer Services nor the Department of Law Enforcement had records related to enforcement.

INDIANA[7]

At the direction of the state legislature, the Indiana State Board of Animal Health (BOAH) adopted regulations governing minimum standards of care for farmed animals in 2011. During the rulemaking process, AWI submitted formal comments to encourage BOAH to establish substantive standards. The resulting standards, however, are vague and only establish a bare minimum of care. Under its authorizing statute, BOAH is granted powers of inspection and investigation as well as powers to institute legal action necessary to enforce its rules.

In response to AWI's request, Indiana released reports prepared by BOAH summarizing its investigations. Each report included a brief description of the investigation, source of the complaint, species and number of animals involved, and an undetailed "resolution" of the case.

Around half of the investigations involving farmed animals originated as a request from law enforcement, animal control, or humane officers; a little less than half were complaints by concerned citizens; and the remainder were either requests by other agencies such as the Department of Health or had no information on the complaining party. Over the survey period, BOAH investigated three complaints brought by "animal rights" organizations.

In the last quarter of 2019, the board conducted 22 investigations related to the welfare of farmed animals. Of those, eight resulted in a written warning, eight resulted in "no further action" (meaning the BOAH investigation revealed no violations that warranted further action), and five resulted in "investigation complete" (meaning BOAH's role in the investigation ended). The records contain evidence that BOAH followed up after two of the eight written warnings. One record of investigation, related to a well-publicized undercover investigation by the nonprofit Animal Recovery Mission showing egregious cruelty and abuse at Fair Oaks Dairy, had no information on a resolution.

In 2020, the board conducted 46 welfare-related investigations, of which 11 resulted in a written warning, 17 in "no further action," and 18 in "investigation complete." There was evidence of follow-up by BOAH related to four of the written warnings.

In 2021, there were 41 investigations related to farmed animal welfare, of which five resulted in a written warning, 17 in "no further action," and 18 in "investigation complete." The records contained no evidence of follow-up for any of the written warnings.

At this dairy operation, multiple violations were found, including failure to provide a clean, dry environment or fresh water, and failure to dispose of at least 10 recently deceased calves.

According to the records officer, the board implemented a new animal welfare operations director position in early 2022. From this point forward, the summary reports include a brief description of any enforcement action taken and no longer distinguish between a "no further action" and "investigation complete" designation. In 2022, there were 40 welfare-related investigations, of which 28 resulted in "investigation complete," one in a verbal warning, and 11 in written warnings (now called "written recommendations"). In seven of the 40 cases, either BOAH or law enforcement followed up, and the records note six in which criminal charges were brought against the violator by law enforcement.

A few cases of note from this survey period involve larger operations. In 2020, BOAH investigated a private citizen complaint of possible neglect at a 2,500-cow dairy operation but found no violations. In 2021, BOAH investigated a complaint by a private citizen of neglect at a commercial egg operation. The minimal records provided reveal only that the citizen complained about one house containing 90,000 laying hens. The summary indicates "investigation complete" as the resolution for this case but provides no further information.

The records indicate that, despite having the power to impose penalties or seek court orders to ensure that minimum care standards are met, BOAH uses only its investigatory power; the extent of its enforcement has been to issue written warnings. There is no record of either BOAH or law enforcement imposing any penalty or issuing any corrective order under the animal care standards. Instead, poor treatment of farmed animals is punished only when it amounts to a violation of the state's animal cruelty statutes.

KENTUCKY[8]

In 2014 at the direction of the legislature, the State Board of Agriculture adopted farmed animal care standards. The standards are vague and require only the bare minimum of care. Notably, however, they include a requirement that veal calves be raised in group housing rather than individual crates—which is unique among state care standards.

The board's power-granting statute states that the regulations governing the care and well-being of on-farm livestock and poultry "shall be adopted, issued, and enforced." Despite the use of "shall," indicating a clear enforcement obligation, the Department of Agriculture had no records responsive to AWI's request. A department employee stated in conversation with AWI staff that the department was "made to" write the regulations but it had never used them. The employee indicated that those concerned about potential abuse or neglect of farmed animals can instead contact law enforcement, which may prosecute under criminal statutes.

LOUISIANA[9]

In 2013, Louisiana's Board of Animal Health adopted animal care standards, which are broad and leave significant room for interpretation. The board has the power to seek injunctive relief or to impose penalties for violations of the standards.

The Department of Agriculture and Forestry, the board's parent agency, determined that there were no responsive records related to enforcement of the standards. In conversation regarding AWI's records request, a department staff member stated that investigations related to substandard care of farmed animals are handled at the parish level by local law enforcement. However, department veterinary medical officers occasionally assist law enforcement in investigations. They also conduct regular inspection of livestock markets, but the department had no records of violations of animal care standards governing those locations for the period of the request.

MAINE[10]

After a 2009 undercover investigation showing egregious cruelty at an egg facility, the Maine legislature directed the Commissioner of Agriculture, Food and Rural Resources to develop best management practices (BMPs) for large egg producers. Although BMPs were developed, they have not been codified in regulation. In response to AWI's last survey, Maine provided evidence that it had performed some inspections to confirm conformance with the BMPs. For this survey period, however, it provided no responsive records. The commissioner, who is charged with enforcing the chapter of the agricultural code containing prohibitions on gestation and veal crates, had no records relating to enforcement or violations.

MASSACHUSETTS[11]

Massachusetts's laws prohibiting extreme confinement for some animals have gone through several iterations and are still, at the time of this report, being challenged in court. In 2016, Massachusetts voters approved an initiative prohibiting the confinement of animals in such a way "so as to prevent [them] from lying down, standing up, fully extending [their] limbs, or turning around freely" and prohibiting the sale of products derived from animals confined in such a way. The law provided for an implementation date of January 1, 2022— based on rules adopted by the Attorney General's Office (AGO).

In 2021, the legislature delayed the implementation of the ban as it related to pork sales until August 2022, shifted enforcement authority from the AGO to the Massachusetts Department of Agricultural Resources (MDAR), and reduced the space requirements for hens (allowing for only one square foot of space per hen if the housing is multi-tiered). MDAR was also directed to promulgate a new set of regulations to replace the AGO's regulations— which it did in June 2022. In August 2022, a court enjoined MDAR from enforcing the rules applicable to pork until the US Supreme Court issued a ruling on the constitutionality of California's Prop 12. Thus, over the survey period, both the AGO and MDAR held enforcement authority.

The AGO responded to AWI's request for records with one letter sent to the vice president of Costco Corporate Foods Division "memorializ[ing] the events surrounding … [the] sale of non-cage free eggs in violation of Massachusetts law." According to the letter, the AGO chose not to seek penalties because Costco self-reported the violation and took remedial measures, including

immediately removing the noncompliant eggs from shelves. The AGO requested that Costco submit a report detailing the company's compliance with its corrective actions every six months for the next two years. The AGO also told AWI that it had one pending investigation, of which it could not share details.

The MDAR had no records responsive to AWI's request. Its recently adopted regulations allow producers and distributors to "self-certify" annually that all covered products they produce and/or sell are compliant. The regulations state that MDAR may inspect a farm for compliance with the confinement regulations if the agency is there pursuant to any other applicable authority—meaning it does not have authority to initiate an on-farm inspection solely to ensure compliance with these regulations. In other words, unlike California, MDAR will conduct complaint-based enforcement and will not conduct routine on-farm assessments.

The regulations do state that "third-party Validators may be used to assist with compliance," suggesting that MDAR may intend to allow a third-party certification to be used to show compliance in the case of a complaint. The records officer indicated that the department does not keep records of certifications, but the regulations state that a person/supplier must produce a certification on demand to "any person who will rely or has relied on" the certification, which could include any private citizen.

MICHIGAN[13]

Like many other states, Michigan has adopted laws to prohibit the most extreme forms of confinement—veal crates, battery cages, and gestation crates. The prohibition on veal crates has been in effect since 2012, the prohibition on gestation crates has been in effect since 2020, and producers have until the end of 2024 to comply with the prohibition on battery cages.

The legislature explicitly granted both the Department of Agriculture & Rural Development (MDARD) and the Department of Attorney General authority to bring a civil action to enjoin violations but did not direct MDARD to adopt rules to confirm compliance or otherwise enforce the bans. The Animal Industry Act (under which the confinement laws are codified) grants MDARD general power to promulgate rules to enforce its provisions, yet it has declined to do so. Both MDARD and the attorney general's office informed AWI that there were no records of any enforcement actions related to these provisions.

NEVADA[14]

In 2021, the Nevada legislature passed a law to phase out battery cages and the in-state sale of eggs from caged hens. As of July 2022, eggs produced or sold in the state must come from hens with at least one square foot of space. The requirement for cage-free housing went into effect January 2024, so was not covered by the survey period.

The legislature tasked the Nevada Department of Agriculture (NDA) with enforcement. The statute directs the NDA to require proof of compliance with hen housing requirements as part of its existing agricultural producer certification scheme. Specifically, it requires farm owners/operators selling eggs in Nevada to submit, among other documentation, evidence that their facilities have been inspected by a government or approved third-party inspector in order to receive a certificate of compliance. Owners of businesses selling eggs must keep a copy of their supplying farms' certificates of compliance. Although the statute grants the NDA power to adopt rules as necessary to ensure compliance, it has not done so.

In response to AWI's records request, the records officer stated that the NDA only issues certificates for producers with over 3,000 hens within the state, and at the time of the request, there were no producers meeting that requirement. They stated that "the majority of eggs that are sold in Nevada come from egg producers out of state, as such, it is up to the retailers to ensure compliance with the products they are purchasing." This response appears to be in conflict with the governing statute, which, as noted above, requires any farm owner or operator offering eggs for sale to obtain a certificate from the department. The statute does not specify that only in-state farm owners/operators are subject to the requirement.

The NDA released records of two complaints. One was unrelated to the request, and the other was submitted by a producer alleging that a competitor was not in compliance, but the investigation was closed because the complainant never responded to the department's follow-up inquiry. The NDA provided no records indicating enforcement activity involving any other cases.

NEW JERSEY[15]

New Jersey has the longest history of enforcing minimum farmed animal care standards. In 1996, the legislature granted the Department of Agriculture authority to adopt regulations governing standards for the "humane raising, keeping, care, treatment, marketing, and sale of domestic livestock," as well as rules to enforce those standards. After a significant delay, and litigation by a state humane organization, regulations were eventually adopted.

When the state veterinarian, New Jersey SPCA, or other state or local authority determines that a severe violation has been committed, department regulations direct that authority to initiate enforcement or penalty proceedings in accordance with the state's animal cruelty statue. Severe violations are those that "include any intentionally cruel or inhumane acts as well as actions due to neglect or substandard practices which place an animal's life in imminent peril or which cause protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ."

The department released several thousand pages of records in response to AWI's request. The records contain a form summarizing each investigation, including details of the complaint, a short summary of findings during any investigation that occurred, and a note of any violations found. When a violation was noted, the forms typically stated that either the department or law enforcement would follow up; however, the majority of records did not contain details on whether follow-up occurred or what may have resulted.

For the last quarter of 2019, the department produced records of 16 investigations related to the welfare of farmed animals, of which 12 resulted in no corrective action after an initial inspection. Four investigations revealed minor violations of the minimum care standards. The department referred two of the cases to law enforcement for follow-up; one violation was corrected by the owner, and the records contain no information of follow-up by either the department or law enforcement for the final violation.

The department produced records of 49 investigations related to farmed animals in 2020. In 32 of these cases, no corrective action was required after an inspection. Of nine investigations resulting in minor violations, five resulted in corrected violations, and four were referred to law enforcement for follow-up. Seven of the inspections showed severe violations and were referred to law enforcement, but the records do not indicate if charges resulted. One case was referred to law enforcement because the owner refused to allow an inspection.

For 2021, the department produced records of 48 investigations, of which 31 resulted in no corrective action. Seven investigations revealed minor violations, of which four were referred to law enforcement; one was closed because the animals in question were slaughtered; and records for the remaining two noted no follow-up. The department found severe violations during 10 investigations, of which nine were referred to law enforcement and one not referred because the violation was corrected.

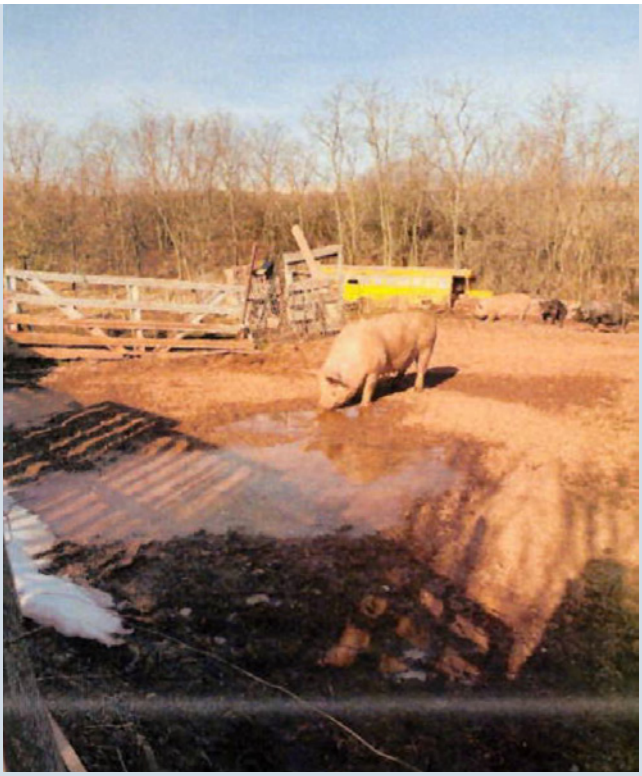
The records for 2022 included evidence of only 16 investigations related to farmed animals—a significant decrease from previous years. It is possible, however, that this is an error by the records officer, rather than an indication that there were fewer investigations. The department was unable to conduct an inspection in two of the cases because the owner refused consent, and 10 inspections resulted in no corrective action. Of three investigations showing minor violations, the department referred one to law enforcement; one was "corrected" after the animal was slaughtered; and the records for the last do not indicate any follow-up. One investigation showing a severe violation was referred to law enforcement.

Citizen complaints initiated around half of the department's investigations, with the other half coming from law enforcement or animal control. Most of the cases arose from complaints of neglect or lack of basic care and shelter involving farmed animals kept as pets or on small hobby farms.

A few cases were noteworthy. In 2021, an inspector at a livestock auction contacted the department regarding a producer that had brought 46 pigs for sale, 20 of whom were emaciated, and three dead on arrival. Investigators were eventually denied access to the property. At the inspection a week later, the investigator noted minor violations related to the condition of the remaining animals, but were told that those animals and the property would be sold within the next few weeks. There was no further information on this case in the records.

Several complaints were related to live bird markets—facilities that receive poultry from multiple sources to be slaughtered and sold on site. In 2021, the department investigated a

The New Jersey Department of Agriculture investigated a complaint lodged after a large number of hens delivered to a live market were dead on arrival.



A New Jersey producer was cited for failing to provide pigs with water and for keeping them in hazardous living conditions that led to the death of several from being caught in debris. The producer had been investigated twice before regarding the same poor conditions.

complaint made by a market that a driver was refusing to take back a load of approximately 800 spent hens from a distributor after discovering that a significant number of the birds were dead on arrival (some crates contained 50-100% dead). The investigator noted that this was a violation of the standards covering transportation, which require that poultry "be handled, loaded, and off-loaded and transported in a manner that minimizes injury, illness and death." The department referred the case to law enforcement, but the records contain no further information.

OHIO[16]

In a 2009 referendum, Ohio voters amended the state constitution to create the Ohio Livestock Care Standards Board (OLCSB). A primary underlying goal for creating the OLCSB was to preempt animal advocacy organizations from achieving more protective care standards through legislation or ballot initiative. AWI and other organizations encouraged the board to establish strong standards and were somewhat successful with respect to species-specific regulations: Veal crates and tail docking of dairy cattle were phased out at the end of 2017, and gestation crates are to be phased out by 2025.

State law directs the Ohio Department of Agriculture to investigate complaints and enforce the rules adopted by the OLCSB. The department is granted the power to levy civil penalties as well as apply to a court for injunctive relief. It issues Notices of Violation, which, if not corrected, result in Director's Orders levying fines. The records made clear that in investigating a complaint, the department conducts an inspection of all animals and the premises as a whole rather than only the animals subject to the complaint. The department responded to AWI's request with thousands of pages of records relevant to the enforcement of the animal care standards.

In the last quarter of 2019, the department conducted 13 investigations related to the care standards. Three ended with no violation after an inspection and nine ended with a Notice of Violation, of which one is missing any evidence of follow-up by the department. The director issued one order, imposing a fine of $13,000. In that case, the department had conducted five inspections over a nine-month period and issued several Notices of Violation, which were not heeded.

In 2020, the department conducted 27 investigations related to the standards. No violation was found after the initial inspection in 14 cases; 10 investigations ended with a Notice of Violation (all of which were corrected), of which one resulted in fines. The director issued three orders and sought $15,000, $6,000, and $2,200 in fines. Records showed that the producer fined $15,000 was raising cattle and deer and incurred 30 violations over a period of three years.

In 2021, the department conducted 25 investigations, of which 19 ended with no violation after an initial inspection. Notice of Violations were issued after six of the investigations, only one of which lacked record of a follow-up.

In 2022, the department conducted 31 investigations related to the farmed animal care standards. No violations were found after inspection in 18 cases. Eleven investigations ended with a Notice of Violation, six of which were corrected, and the remaining five had no record of resolution. The director issued two orders, one of which sought $10,000 in fines from a producer who had left at least 25 pigs to starve inside a barn.

For the first quarter of 2023, the department conducted five investigations, all of which ended with no violation after an initial inspection.

For the entire period covered by the request, there were six complaints with no subsequent information and two records of an initial attempt to inspect with no subsequent follow-up. Where the complaining party was noted, it was fairly evenly divided between law enforcement or animal control and private citizens or rescues. Some investigations were referrals from other agencies, including the Department of Agriculture's Dairy Division and the Health Department.

Several cases are of note. In late 2021, the Department of Agriculture investigated a complaint that a poultry hatchery was offering "toe conditioning" services on turkeys for identification purposes. The animal care regulations state

that toe conditioning, which is the amputation of the end of a bird's toes in order to eliminate the toenail, is prohibited for identification purposes and can only be performed if done in "a humane manner" with the purpose of minimizing injury. The subject of the complaint was unaware of the rules; the department provided a Letter of Instruction serving as official notice. No Notice of Violation was issued.

In 2022, a member of a local environmental nonprofit organization submitted a complaint claiming that Fairfield Pork, a newly built facility housing a little over 2,000 breeding sows, had constructed gestation crates, despite the requirement that they be phased out by 2025. The rules state that any new construction after the effective date of the rules may not include gestation crates, defined as "any configuration in which a mature animal is continuously housed, that does not allow it to turn around and freely enter or exit." The department conducted an inspection and found that Fairfield had constructed "free access" crates, which are identical to a traditional gestation crate except for the fact that when unlocked, the sow can exit by backing out of the crate. (There is some science to suggest that sows in free access crate housing still spend most of their time confined, especially when not given adequate space in the areas outside of the free access crates.)

A final case of note also occurred in 2022, when the department received a complaint that a dairy producer was docking the tails of replacement heifers. The department investigated and issued a Notice of Violation after confirming that the tails were being docked in contravention of the regulations, which provide that docking can only be performed by a veterinarian and only if medically necessary. The producer informed the department he would stop docking tails immediately, and the case was closed. This is the first evidence of the enforcement of the prohibition on tail docking by Ohio or any of the other three states with this prohibition.

OREGON[18]

In 2007, the Oregon legislature passed a bill prohibiting gestation crates. Violations are punishable under criminal statute by a fine not to exceed $2,000. In 2011, the legislature passed a law meant to transition commercial egg producers in Oregon to larger, "enriched colony" caging systems. The law was later amended to require at least 116 square inches per hen (~0.8 ft^2), regardless of housing system. Although the legislature again amended the law in 2019 to remove the enriched colony system standards and instead require cage-free housing for both hens within the state and hens (regardless of location) producing eggs sold within the state, the law did not go into effect until after the period covered by this survey. At the time of the survey, the regulations required proof of compliance with housing standards as part of the state's egg-processor license application and required producers to provide the Oregon Department of Agriculture with a business plan

The Ohio Department of Agriculture investigated a complaint that a newly built facility was using gestation crates illegally but found no violation because the pigs were housed in "free access" crates.

Excessively muddy conditions were a commonly encountered issue.

describing the manner in which they intend to comply with the "aspirational goals" established by the 2011 law.

AWI received no records in response to its request. In a subsequent conversation, the department informed AWI that it had stopped collecting farm business plans in 2019 and instead was relying on complaints to expose noncompliance. It had no records of complaints within the timeframe of the request.

RHODE ISLAND[19]

In 2012, Rhode Island established the Livestock Care Standards Advisory Council to recommend minimum care standards, which were adopted in 2016. Laws banning tail docking of dairy cattle and prohibiting the use of gestation crates and veal crates went into effect in 2012 and 2019, respectively. These three prohibitions were incorporated into the state's existing minimum care standard regulations. A 2018 law phasing out battery cages does not go into effect until 2026.

The power to enforce the minimum care standards is granted to both the Department of Environmental Management's Division of Agriculture and its Division of Law Enforcement. Violations are punishable by a fine not to exceed $500. The standards contain both general and species-specific requirements, but are vague in many places, allowing the Division of Agriculture significant flexibility in determining what constitutes a violation. For example, many standards merely require handling or management procedures to be "performed in a humane manner."

Between September 2019 and February 2023, the Division of Agriculture issued 12 Letters of Intent to Enforce. The majority of letter recipients were very small or hobby farms. One 2021 investigation involved crowded conditions and lack of food and water at a small slaughterhouse. The most common violations were for failure to provide housing designed to minimize bruising and injury, followed by failure to provide housing that is safe, clean, and clear of standing water and excess manure. All letters stated that the department would conduct a follow-up inspection to monitor progress in achieving compliance with the regulations. Evidence of follow-up was only available in three of the cases: Two resulted in a second Letter of Intent to Enforce, and one resulted in a Notice of Violation and a $500 penalty. The records officer informed AWI that there were no records of enforcement from the Division of Law Enforcement.

WASHINGTON[20]

In 2011, Washington passed a law phasing out the use of battery cages. As with Oregon, the law's initial goal was to transition to larger or enriched caging systems. However, in 2019 the legislature updated the law to require eggs produced or sold in the state to be from hens housed in a cage-free system with minimum space requirements by 2024. Between 2017 and the end of 2023, producers and dealers were required to comply with the 2011 law's provisions. The Department of Agriculture is directed to enforce laws related to hen housing through its egg handler or dealer licensing program. The statute specifically states that any license application "must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations" that comply with hen housing standards.

It is unclear what form of proof the department accepted, if any, during the survey period, because it maintained that there were no records responsive to AWI's request. According to the department, however, all that a producer or dealer must do to be considered in compliance is to provide the name of the company from which they received a cage-free certification, and sign an attestation that states, "I understand that it is my responsibility to ensure, and I have determined, that all new or renewal applications submitted … must include proof that all eggs and egg products provided in intrastate commerce by the applicant (including eggs brought in from out of state for resale) are produced by commercial egg layer operations [in compliance with the state's requirements]." Unfortunately, after the words "I understand that it is my responsibility to ensure, and I have determined," the attestation repeats the legal requirement from the statute verbatim, without adjusting it to fit a declaration made by the applicant. Consequently, applicants appear merely to be indicating that they understand their responsibility to ensure (and have determined) that there is, in fact, a legal requirement for applicants to furnish proof of compliance. Yet, if licenses are granted based solely on submitting this attestation and the certifier's name, then applicants are not actually being required to furnish proof of

compliance—they are not even being required to furnish a coherent *promise* of compliance.

WEST VIRGINIA[21]

West Virginia created a Livestock Care Standards Board in 2010 and adopted minimum standards in 2015. The governing statute provides that complaints regarding inhumane treatment of livestock shall be lodged with local law enforcement, and those complaints will be forwarded to the Department of Agriculture and the standards board. The statute states that the Commissioner of Agriculture "shall administer and enforce" the standards by coordinating with and providing assistance to law enforcement. Violations of the standards are punishable in accordance with the state's criminal animal cruelty statutes.

In response to AWI's records request, West Virginia provided a spreadsheet with a brief description of 10 complaints related to the care standards. Seven of the cases originated as citizen complaints and were referred to the department by law enforcement. The records contain no details of the investigation or disposition because, in apparent response to AWI's last survey, the legislature passed a law exempting documents related to investigations from public records.[22]

Discussion

MINIMUM ANIMAL CARE STANDARDS

As was apparent from the last survey, the laws with the most consistent enforcement are minimum animal care standards. AWI's 2023 survey reveals that six of the eight states that have established minimum standards of care for farmed animals have conducted investigation or enforcement activity. These states primarily investigate complaints received from concerned citizens, humane officers, and law enforcement. The complaints primarily involve the care of animals that are visible to the public—cattle, goats, and sheep, and to a lesser extent, pigs, birds, and rabbits raised outdoors. Most investigations conducted by the state agencies charged with developing or implementing these standards are related to the care of animals on small hobby farms with no more than 50 animals. However, as noted above, there are a few instances where the state agency's authority is invoked to investigate larger commercial operations.

The states with the most extensive records of enforcement are Ohio, New Jersey, and Indiana. Ohio is notable in that the state agency exercises both investigatory and enforcement power. While New Jersey and Indiana agencies have the power to enforce standards through civil penalties or court orders, the records indicate that those agencies took no action beyond written warnings. In New Jersey, the department is obligated to refer severe violations to law enforcement for prosecution, while Indiana's standards have no enforcement mechanism at all. The Indiana State Board of Animal Health acts in an investigatory capacity, and it is up to law enforcement to determine whether a violation of the state's general cruelty statutes has occurred.

The significant downside of animal care standards is that they are complaint-based—which means there is little opportunity for animals out of public view (the vast majority of farmed animals) to benefit. Some aspects of minimum care standards—adequate housing requirements or prohibitions on specific practices, for example—could be checked with a routine audit. But because most of the standards are related to day-to-day care (e.g., "humane" handling, provision of adequate food and water), they don't lend themselves to audit-based enforcement and typically do not address aspects of large-scale farming that are detrimental to animal welfare, such as barren environments and chronic pain or hunger that results from genetic selection for rapid growth. However, it should be noted that there were a few instances where an inspector from another agency or department conducting an inspection (e.g., the Ohio Department of Agriculture's Dairy Division) noticed possible violations and forwarded them to the appropriate department.

Under most minimum care standards, animals must be provided with a dry resting place and access to fresh water.

In a number of cases, minimum care standards were violated when a facility failed to provide adequate feed, leaving animals in poor body condition.

The upside of minimum care standards is that they can and do provide some measure of protection for farmed animals independent of a state's criminal cruelty statutes—which may provide little or no protection. In Ohio, Indiana, and New Jersey, for instance, there are mechanisms—even if only written warnings or notices—through which an authority can seek to improve the treatment of farmed animals kept in conditions that are detrimental to their welfare even when there is no violation of the cruelty statute. For example, records from all three states discuss cases where producers were required to remedy especially muddy conditions, or to address medical issues that, if left untreated, may not rise to the level of cruelty under the statute. Additionally, in states such as New Jersey and Indiana, violations of minimum care standards can lead to the prosecution of criminal cases of neglect and abuse. As a practical matter, evidence of an inspection by the department of agriculture, and the ability of its inspectors to testify in court, would ease the investigatory burden of local district attorneys, making prosecution more likely.

Animal protection advocates have generally opposed the creation of minimum animal care standards due to concerns that they will present an obstacle to later attempts to obtain higher-level husbandry standards. This is a valid concern. However, as described below, there are ways to craft laws establishing minimum livestock care standards to maximize their efficacy in protecting farmed animals. The likelihood of additional states adopting livestock care standards varies significantly by state. The reality is that state legislatures, especially in states that have significant levels of production, will prove a difficult obstacle for any legislation meant to regulate agriculture. Any law likely to pass is one that includes industry input, whether that be through the members that make up the body creating the rules, or the criteria available to that body in crafting the rules.

Creation of Standards

An effective law is one that establishes a board that is required to recommend or create rules based on a specific set of criteria. That way, the type of litigation that occurred in New Jersey over that state's rules can be avoided.[23] In that case, the law granting the authority to the New Jersey Department of Agriculture specified that the guiding principle in establishing the standards was whether the treatment of animals was "humane." Unsurprisingly, the New Jersey SPCA and other animal advocates' definition of humane differed significantly from that of the department. The court found that the department's blanket determination that "routine husbandry practices" were humane was at odds with the statute, and the department amended the regulations to comply with the court's decision.

Any new laws meant to establish care standards should specify that, at minimum, the standards should require food and water sufficient to maintain each animal in good

An Ohio producer who apparently left pigs to starve was fined $10,000. Investigators found six pigs still alive and over 20 dead.

health, an environment compatible with protecting and maintaining the good health and safety of the animal, and medical care necessary to maintain the animal in good health. The law should further specify what the drafting body may consider in developing the standards. The body should adopt standards based on current animal welfare science and should incorporate the animal welfare standards of the World Organisation for Animal Health's Terrestrial Animal Health.

Criteria for Ohio's standards included "generally accepted veterinary medical practices, livestock practice standards, and ethical standards established by the American veterinary medical association [*sic*]" as well as "best management practices for the care and well-being of livestock." These criteria, although arguably very industry friendly, still resulted in Ohio's standards including significant limitation on the time that sows can be kept in gestation crates—albeit with a 14-year phase-in period. Similarly, the standards prohibited the tail docking of dairy cattle, a practice only otherwise prohibited in California at the time.

If possible, criteria that have language relating to productivity or economic concerns should be excluded. For example: "safe, affordable, healthy food supplies for consumers" from Kentucky's statute or "the economic impact the standards may have on bovine, equine, ovine, caprine, porcine, and poultry farmers, the affected … sectors, and consumers" in Louisiana's statute. Such criteria may influence the board to create standards that prioritize protecting producers' financial health over animal health and welfare.

Requirement for Periodic Review of Rules

To ensure that minimum care standards continue to reflect the most up-to-date animal welfare science, the statute should also direct the board to meet periodically (e.g., every quarter) to review the rules and consider changes to the factors that are weighed when adopting regulations.

The board meetings should allow for public testimony, as many boards within state agencies do. This should give an opportunity for animal welfare organizations or other relevant stakeholders to address the board and suggest improvements. Welfare organizations can take advantage of public comment periods that are required under most state administrative procedure acts to present the board with relevant science to support modifications to rules.

An example of this process in practice occurred when, in 2021, AWI sent a letter to the Ohio Livestock Care Standards Board recommending updates to the rules, including requiring pain relief for physical alterations such as disbudding and dehorning, castration, and tail docking—based on changes in generally accepted veterinary medical practices and best management. The board solicited input from Ohio State University's Agriculture Department and the Ohio Veterinary Medical Association, both of which agreed that the standard of care in veterinary medicine regarding pain relief had changed since 2011, and in order to reflect current best practices, pain management protocols should be implemented for disbudding and dehorning. Two years later, the OLCSB released draft rules requiring pain relief for disbudding and dehorning ruminants—making Ohio the only state to do so to date.

It should also be noted that the establishment of minimum care standards does not preclude state legislatures from adopting additional, stricter standards. For example, the New Jersey legislature recently prohibited two specific confinement practices: use of gestation crates and veal crates; these prohibitions will be added to the states' minimum care standards.

Other Considerations in Drafting

- Ensure one seat on any board or council is reserved for a representative of a local humane society or someone knowledgeable in animal welfare science. It is important to do so, since it is typical for statutes to specify who can hold membership on livestock care standards or animal health boards (e.g., the state veterinarian, a person engaged in particular areas of animal production, or a veterinarian licensed in the state).
- Include language allowing a mechanism for complaints and an obligation to investigate (e.g., Louisiana's and Kentucky's agencies are not obligated to investigate complaints).
- Include clear language that designates what entity is responsible for enforcement—the state agency and/or law enforcement. The best entity to enforce the standards may depend on the state, but authority would preferably be granted to a single agency with expertise and the

authority to issue orders and penalties and to seek declaratory relief in court.

- Include a requirement that violations arising to certain levels of severity be enforced, leaving no discretion for the agency (e.g., New Jersey's statute says severe violations "shall be enforced").
- Include a requirement that all violations, no matter the severity, be followed up, either by the agency or law enforcement.
- Allow for a mechanism to authorize and require the agency to continue to inspect farms/production facilities for a period of time after violations are found, to confirm they have been corrected.

Given the sheer amount of time, effort, and expense it takes to get these laws passed, it is important for the end result to meaningfully serve the intended purpose. With a thoughtfully worded bill, minimum livestock care standards can and do provide meaningful protection to farmed animals. Although most often enforced as to the most visible animals, they can be relevant to large-scale production—thereby improving the welfare of more farmed animals. Additionally, a mechanism can be included to ensure the rules are updated as new science becomes available.

LAWS PROHIBITING CERTAIN PRODUCTION METHODS

Laws prohibiting specific practices known to be detrimental to welfare are more widespread than minimum care standards. If enforced via on-farm audits, they offer protection for all farmed animals in the state and—in the case of added-on sales bans—those outside the state as well. Unfortunately, enforcement of these laws is an issue. It is generally assumed that a vast majority of producers will be in compliance with anti-confinement laws by the time they go into effect, but there is currently no way to confirm this.

Of the 30 laws or regulations that ban a specific practice, there were records of enforcement for only two: Ohio's tail docking ban (incorporated within its minimum animal care standards) and Colorado's hen housing standards. One possible explanation for this near-total absence of records is that most of these laws have no mechanism to facilitate enforcement—they rely entirely on complaints, with no official agency proactively confirming compliance. Examples of enforcement mechanisms include producer reports or affidavits, third-party audits, and departmental inspections.

It also appears that few, if any, complaints or requests for investigation into violations of the laws are submitted to agencies or law enforcement. The same factor that inhibits enforcement of minimum animal care provisions in industrial settings may be at play here: The animals are not visible to the public. Most farmed animals are kept entirely within rural, indoor facilities where public access is extremely limited—sometimes by law: Several states have passed laws designed to prevent and criminalize unauthorized access to agricultural facilities, thwarting animal protection advocates from conducting investigations.

Another reason for what appears to be a lack of enforcement is that many of the laws prohibiting specific practices have been passed in states where there is little to no production that would involve such practices. For example, of the nine states with gestation crate prohibitions, only Colorado and Michigan have a significant number of breeding sows (and are ranked 14th and 15th in national inventory). In its *Quarterly Hogs and Pigs* report, the USDA doesn't even report individual state data on breeding sows for the other seven states.[24] In another example, only two of the states with veal crate bans have significant levels of production. (Additionally, the American Veal Association, which represents a majority of US veal producers, declared their members veal crate free in 2017.[25]) Lastly, as noted above, Nevada noted that it had no producers in state that would be subject to the hen housing restrictions.

In many cases, the laws have been in effect for several years, giving producers time to comply. At the start of the survey period in late 2019, six of the gestation crate prohibitions had been in effect for at least four years. Producers seeking to establish new production facilities in these states would likely already be aware of the existing prohibitions. It is also possible that producers are complying with the laws, in recognition that market demand will continue to trend toward products derived from animals living in higher-welfare conditions.

Laws drafted to prohibit certain practices within the state should include language establishing a clear mandate for a single relevant agency (agriculture/food safety) to implement a specific enforcement mechanism. This is to avoid confusion over what entity has jurisdiction, and to avoid the risk that agencies use their discretion to implement less robust enforcement. Producers should be required—as they are in California or Colorado—to register with the responsible agency, and they should be required to provide annual proof that all of their facilities are in compliance. The agency should be given authority to accept independent third-party certifications and to conduct its own inspections (either to confirm compliance or to investigate complaints).

SALES BANS

Of the nine laws prohibiting the sale of specific animal products, AWI received evidence of enforcement for four—all of which were prohibitions on the sale of eggs from hens in battery cages.

Because many states with sales bans don't have the in-state production capacity to meet demand, they must rely on out-of-state producers. The challenge of these laws is confirming

that all products sold in the state, regardless of origin, are compliant. Some states take a proactive approach—requiring producers and distributors to show that the products met the relevant standards prior to offering them for sale in the state. Other states, such as Massachusetts and Oregon, require producers or distributors to maintain records confirming their products are compliant, but only require that proof be furnished to the department of agriculture upon request in the event of a complaint. Washington, as noted above, only requires a distributor to affirm that they understand proof of compliance is required—but doesn't require the distributor to submit actual proof of compliance.

There are obviously significant flaws in a complaint-based compliance model. There is little reason to assume that most retailers would report their own noncompliant sales to the agency, as Costco apparently did in Massachusetts. Absent that unlikely event, a complaint would have to originate from someone who is both aware of production conditions on the farm and knows where the products are sold and what practices are prohibited in that jurisdiction. This would also be a rare circumstance. An employee on a sow breeding farm in Iowa or a layer house in Indiana, for example, may have no idea where products from the farm end up. And a piece of whole pork or veal in a grocery store in California or Massachusetts would reveal nothing to the customer about conditions on the farm or even, in many cases, where that farm is located.

Fortunately, other states have not adopted a complaint-based model. Arizona requires that proof of compliance accompany paperwork that must be provided for eggs sold in the state. Colorado, Nevada, and California require producers or sellers to show proof of compliance when they register or apply for certification with the state department of agriculture. However, it should be noted that, although Nevada's statute appears to require farmers to certify with the Nevada Department of Agriculture prior to sale, the department does not seem to be enforcing this requirement. Also, as noted above, California allowed producers and sellers to "self-certify" during the survey period.

One common critique of sales bans is that they would require agency officials from one state to conduct inspections in another. This is problematic not only from a jurisdictional point of view, but also because many state agencies are significantly underfunded and understaffed. The market, however, already offers a simple solution: Although many of these laws grant agencies the power to conduct inspections to confirm compliance, agencies are relying instead on third-party certifiers to conduct the required inspection and audit. Many of these certification programs set species-specific animal welfare standards (which often include prohibition on practices such as extreme confinement) and perform on-farm inspections to ensure those standards are met by producers.

Several companies outside of these comprehensive programs offer auditing to confirm compliance with a specific standard—for example, whether a producer is using gestation crates.

The rigor of the audit procedure varies between certifiers, which presents a drawback to this enforcement method. For example, UEP cage-free certification, which is accepted as proof of compliance by many states, audits producers annually. During these inspections, auditors use the stocking density of houses to estimate how much useable floor space each hen has. However, UEP auditors give producers a week's notice prior to inspections and are only required to inspect 25 percent of a producer's houses.[26] The removal of a relatively small number of hens from a house would be a simple way to temporarily give the appearance of compliance with these standards with little notice. In drafting legislation, it may be important to specify which certification schemes can be used—for example, only truly independent third-party certifiers that conduct unannounced on-site inspections.

There has been a trend towards cage-free egg production in the United States, and many third-party certifications exist that cover egg production, making enforcement of these laws somewhat simpler. Enforcement of bans on the sale of noncompliant pork and veal, however, is significantly more complicated. There are third-party certification programs that cover pork and are compliant with the law, but such programs are not nearly as widespread as those for cage-free eggs. Additionally, tracing products from farm to slaughterhouse to retailer is difficult unless the slaughter plant only processes animals raised in compliance with the applicable housing standards. Both California's and Massachusetts's laws—specifically as applied to pork—have been the subject of extensive litigation reaching all the way to the Supreme Court. It is unsurprising, therefore, that there is little to no evidence of enforcement of those states' laws.

Although there is little evidence of enforcement of sales bans, these laws have the potential to be incredibly impactful—highlighted by the fact that industry groups have put significant resources into trying to have those laws repealed, preempted, or declared unconstitutional.

In crafting these laws, state legislatures are likely inclined to give the implementing agency significant discretion in how it ensures that only compliant products are sold in the state. However, the statute should at least direct the agency to require producers and distributors to prove compliance via an on-farm inspection, which can be performed by a competent third-party certifier. Fines for noncompliance should be significant enough to discourage violations and not allow producers to treat them merely as a cost of doing business.

Conclusion

Although several new farmed animal state laws have been passed since AWI's last survey, there does not appear to be a significant increase in the enforcement of these laws. All of these protection laws, whether minimum livestock care standards, sales bans, or prohibitions on extreme confinement, have the potential to improve the welfare of a significant portion of the billions of farmed animals raised in the United States. However, how the laws are drafted—the nature of the powers given to the agency or instructions for carrying out the provisions of the law—have an enormous impact on their efficacy. Animal advocates, legislators, and policymakers should look carefully at how states have implemented these laws, if at all, and learn from their shortcomings and strengths.

REFERENCES

1. AWI contacted the agency tasked with enforcing the law and requested documentation of the following: all complaints received, inspections/audits/investigations conducted related to enforcement, enforcement actions taken (including warnings), and civil or criminal penalties assessed for violations of the relevant law. In cases where no particular entity held enforcement power, requests were made to the state department of agriculture and, where noted, the state attorney general.
2. Statute: Alaska Stat. §§ 03.55.100 to 03.55.190; § 03.05.090. Regulation: Alaska Admin. Code tit. 18 §§ 36.500 to 36.540.
3. Statute: Ariz. Rev. Stat. Ann. § 13-2910.07 (gestation and veal crates); Ariz. Rev. Stat. Ann. § 3-710 (eggs). Regulation: Ariz. Admin. Code R3-2-907 (eggs).
4. Statute: Cal. Health & Safety Code § 25990 to § 25994.8 (confinement); Cal. Health & Safety Code § 25980-84 (Foie Gras); Cal. Penal Code § 597n (tail docking). Regulation: Cal. Code Regs. tit. 3 §§ 1320 to 1327.3 (confinement).
5. Statute: Colo. Rev. Stat. § 35-50.5 (gestation and veal crates); Colo. Rev. Stat. §§ 35–21–201 to 35–21–209 (eggs). Regulation: 8 Colo. Code Regs. §§ 1202–19:1 to 19:12 (eggs).
6. Fla. Const. Art. 10 § 21.
7. Statute: Ind. Code § 15-17-3-23; Ind. Code § 15-17-18-12. Regulation: 345 Ind. Admin. Code 14.
8. Statute: Ky. Rev. Stat. § 257.196; Ky. Rev. Stat. § 257.030 (authority). Regulation: 302 Ky. Admin Regs. 21:001 to 21:080.
9. Statute: La. Stat. Ann. § 3:2093(12). Regulation: La. Admin. Code tit. 7 Part XXI § 2101-2117.
10. Statute: Me. Stat. tit. 7 § 4020.
11. Statute: Mass. Gen. Laws 129 App. § 1. Regulation: 330 Mass. Code Regs. 35.00 (MDARD); 940 Mass. Code Regs. 36.00 (AG).
12. Triumph Foods, LLC et al v. Campbell et al, 1:23-CV-11671, D.Mass.
13. Statute: Mich. Comp. Laws § 287.746.
14. Statute: Nev. Rev. Stat. §§ 583.211 to 583.251.
15. Statute: N.J. Stat. Ann. § 4:22-16.1. Regulation: N.J. Admin. Code §§ 2:8-1.1 to 2:8-8.7.
16. Statute: Ohio Rev. Code Ann. § 904.04. Regulation: Ohio Admin. Code 901:12-1 to 901:12-15.
17. Regulation: Ohio Admin Code 901:12-8-01.
18. Statute: Or. Rev. Stat. § 600.150 (gestation crates); Or. Rev. Stat. § 632.845 (eggs); Or. Rev. Stat § 153.012 (penalties). Regulations: Or. Admin. R. 603-018-0000 to 603-018-0000 (excepting 603-018-0015 repealed).
19. Statute: 4 R.I. Gen. Laws Ann. § 4–1.1–1 to 4–1.1–6 (confinement); 4 R.I. Gen. Laws Ann. § 4-26-5 (Animal Care). Regulation: 250 R.I. Code R. §§ 40-05-5.1 to 40-05-5.10.
20. Statute: Wash. Rev. Code § 69.25.065 and 69.25.107; *Agricultural Addendum*, WA Department of Revenue, available at https://dor.wa.gov/sites/default/files/2022-02/700307.pdf
21. Statute : W. Va. Code § 19-1C. Regulation: W. Va. Code R. § 73-1.
22. W. Va. Code § 19-1C-4.
23. *New Jersey Soc. For Prevention of Cruelty to Animals v. New Jersey Dep't of Agric.*, 196 N.J. 366, 955 A.2d 886 (2008).
24. National Agricultural Statistics Service, USDA, No. 1949-1921, Quarterly Hogs and Pigs, (June 29, 2023) available at https://downloads.usda.library.cornell.edu/usda-esmis/files/rj430453j/5999pk51d/73667k688/hgpg0623.pdf
25. American Veal Association Resolution, Am. Veal Ass'n (May 9, 2007) available at https://static1.squarespace.com/static/56b1263940261d30708d14b4/t/ 56be130327d4bdc613a7777a/1455297284477/GRP_HOUSING_ RESOL1-0507.pdf (requiring the transition from veal crates to group housing conditions by December 31, 2017).
26. *UEP Certified Third Party Audits Verify Program Compliance*, United Egg Producers, (July 23, 2021) available at https://uepcertified.com/uep-certified-third-party-audits-verify-program-compliance/

Please see AWI's *Legal Protections for Animals on the Farm* report for more information about the laws mentioned above.

This report was prepared by Adrienne Craig, Farmed Animal Program Staff Attorney, with assistance from Dena Jones, Farmed Animal Program Director, and AWI policy interns Amanda Louie and Caitlin Kelly. (July 2024)