

2016 STATE LEGISLATIVE REVIEW

By
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I. INTRODUCTION

The past year revealed a multitude of state legislation aimed at the protection of many diverse species of animals. Legislative topics and their ensuing debates ranged from regulation of big agribusiness and wildlife trafficking, to animal cruelty of both domestic and captive wild animals, to hot car laws, and to orca and cetacean protection. Each topic appeared in more than one state, creating a wave of animal protection legislation across the United States and providing hope for even more groundbreaking animal rights legislation in the year to come.

* © Kaci is a second-year law student at Lewis & Clark Law School. She would like to dedicate this piece to her fur babies, Etta James and Leonardo DaVinci, for their infinite cuddles and love after long days.

II. BIG AGRICULTURE

A. *Oklahoma*

Oklahoma's State Question 777, referred to as a 'right to farm' ballot measure, "would have protected corporate interests and foreign-owned big agribusiness."¹ State Question 777 sought to create an "amendment to the Oklahoma Constitution prohibiting the Oklahoma legislature . . . from enacting laws restricting agricultural production unless such laws were needed to advance a compelling state interest."² The term 'compelling state interest' is typically used as a judicial test to prohibit restrictions on fundamental rights, meaning the ballot measure would have given similar protection to farmers from restrictions on agricultural production as people have with respect to constitutional rights.³ Though all fifty states currently have variations of 'right to farm' statutes, these "statutes generally provide protection against nuisance claims."⁴ The broad wording of the ballot measure, however, extended far beyond nuisance claims and could have resulted in the future prevention of legislative restrictions related to puppy mills, horse slaughter, and cockfighting.⁵

Collectively, proponents and opponents of State Question 777 spent more than \$1.8 million by election day, with 'yes' donations coming from individual farmers and groups such as the Pork Council and 'no' donations coming from individual donors and organizations such as the Humane Society of the United States.⁶ Supporters of the measure argued that a constitutional amendment would result in a "competitive, free-market system that allows the best farming practices to

¹ *Oklahoma Voters Crush Deceptive, Overreaching "Right to Harm" Power Grab*, HUMANE SOC'Y U.S. (Nov. 9, 2016), http://www.humanesociety.org/news/press_releases/2016/11/OK-defeat-777-091116.html?credit=web_id154209008 [<https://perma.cc/XSC4-LUVY?type=image>] (accessed Apr. 9, 2017) [hereinafter *Oklahoma Voters*].

² SHANNON L. FERRELL & LARRY D. SANDERS, OKLA. STATE U., STATE QUESTION 777: A PROPOSED CONSTITUTIONAL AMENDMENT 1 (2016); *Oklahoma Right to Farm Amendment, State Question 777 (2016): Text of Measure*, BALLOTPEDIA, https://ballotpedia.org/Oklahoma_Right_to_Farm_Amendment,_State_Question_777 (2016) [<https://perma.cc/YVV2-VZT5>] (accessed Apr. 9, 2017).

³ See FERRELL & SANDERS, *supra* note 2, at 2 ("Generally, a government body cannot restrict a fundamental right without a compelling state interest. Examples of fundamental rights in this context include constitutional rights such as First Amendment rights . . . , rights of due process and access to the courts, as well as familial rights such as child custody and marriage.").

⁴ *Id.*

⁵ *Oklahoma Voters*, *supra* note 1.

⁶ Joe Wertz & Logan Layden, *A Field Guide to State Question 777: StateImpact's Documentary on OK's Agricultural Ballot Measure*, STATEIMPACT (Nov. 4, 2016), <https://stateimpact.npr.org/oklahoma/2016/11/04/a-field-guide-to-state-question-777-stateimpacts-documentary-on-oks-agricultural-ballot-measure/> [<https://perma.cc/QKC5-S2Z6>] (accessed Apr. 9, 2017).

be decided by consumers.”⁷ United States Senator and proponent of State Question 777, James Inhofe (R-Okla.), stated that “[a]s a farmer, the last thing you want in Oklahoma is a bureaucracy coming in and telling you what you can and cannot plant.”⁸ Opponents of the measure included three former governors, a former attorney general, and the Inter-Tribal Council of the Five Civilized Tribes.⁹ Barry Switzer, a former University of Oklahoma football coach, opposed the measure, stating that, “Oklahoma’s constitution wasn’t designed to give special advantages to anyone, let alone to an industry that affects our land, water, and food.”¹⁰ In the end, opponents defeated the ballot measure with more than 60% of the votes.¹¹

B. Massachusetts

Massachusetts voters overwhelmingly approved a landmark measure banning the extreme confinement of farm animals as well as the sale of all products from farm animals subjected to extreme confinement.¹² The new law, which will take effect in 2022, prohibits farmers from selling products from hens, pigs, or calves in spaces that prevent the animals from “lying down, standing up, fully extending [their] limbs or turning around freely.”¹³ “The Massachusetts initiative specifies each hen would need 1.5 square feet, or 216 square inches, of living space, compared with the 67 square inches conventional battery cages offer.”¹⁴ The law follows on the heels of other state legislation prohibiting extreme confinement of certain farm animals; however, Massachusetts now takes confinement a step further by barring the sale of animal products produced in such confined spaces, even if the animals are raised outside the state.¹⁵ “To have an entire state declare that cruelty to farm animals is such a pressing matter that it is establishing a retail standard to ensure that animals are able to at least engage

⁷ Katrina Goforth, *Inhofe Touts Right to Farm*, ALTUS TIMES (Oct. 15, 2016), <http://altustimes.com/news/6095/inhofe-touts-right-to-farm> [https://perma.cc/RYA5-5YQ9] (accessed Apr. 9, 2017).

⁸ *Id.*

⁹ *Oklahoma Voters*, *supra* note 1.

¹⁰ Barry Switzer, *Barry Switzer: Why I Oppose State Question 777*, NEWSOK (Oct. 26, 2016), <http://newsok.com/article/5524078> [https://perma.cc/QUQ6-YYJY] (accessed Apr. 9, 2017).

¹¹ *Oklahoma Voters*, *supra* note 1.

¹² *Id.*

¹³ Abby Elizabeth Conway, *Mass. Voters Approve Question 3, Banning Certain Farm Animal Confinement Practices*, WBUR 90.9 POLITICKER (Nov. 8, 2016) <http://www.wbur.org/politicker/2016/11/08/question-three-animal-confinement-results> [https://perma.cc/RT4C-RRX2] (accessed Apr. 9, 2017).

¹⁴ Zack Colman, *The Fight for Cage-Free Eggs*, ATLANTIC (Apr. 16, 2016), <http://www.theatlantic.com/politics/archive/2016/04/a-referendum-on-animal-rights/478482/> [https://perma.cc/SM23-MBPL] (accessed Apr. 9, 2017).

¹⁵ Nico Pitney, *Massachusetts Voters Are About to Pass a Historic Animal Protection Law*, HUFFINGTON POST (Oct. 6, 2016), http://www.huffingtonpost.com/entry/massachusetts-farm-animals-law_us_57f4414be4b0325452623771 [https://perma.cc/25G6-7H3T] (accessed Apr. 9, 2017).

in basic movement really sends a powerful signal,” said Paul Shapiro, Vice President of Policy at the Humane Society of the United States.¹⁶

The measure faced great opposition from those who argued a requirement for eggs sold on the market to be from cage-free hens would “raise the cost of a key source of protein and, effectively, create a regressive tax with an outsize impact on poor families.”¹⁷ Supporters agreed the cost of eggs, pork, and veal would increase with passage of the measure, but debate ensued over how much.¹⁸ Massachusetts currently imports 99% of its eggs from other states, making predictions about the effect of the measure on future increase in sales price difficult to pinpoint.¹⁹ During a debate at UMass Boston, Paul Shapiro cited a study showing an increase in price by only a penny per egg per dozen, while Bill Bell of the New England Brown Egg Council argued that “the price hike would be steeper and would have a greater impact on egg producers in other states, who would be required to comply with Massachusetts’ cage-free law in order to sell eggs in-state.”²⁰

Future litigation stemming from a federal lawsuit over a similar cage-free California law could potentially affect the outcome of the new Massachusetts law.²¹ However, with the national trend for cage-free animal products on the rise²² and animal welfare groups seeking to poise themselves for similar success in big agricultural states,²³ state ballot measures similar to that of Massachusetts are likely to become more widespread in the years to come.

¹⁶ Joshua Miller, *Question 3 Is Approved in Massachusetts*, BOS. GLOBE (Nov. 8, 2016), <https://www.boston.com/news/politics/2016/11/08/question-3-is-approved-in-massachusetts> [https://perma.cc/P9JA-7AYM?type=image] (accessed Apr. 9, 2017).

¹⁷ *Id.*

¹⁸ Lauren Dezenski, *Both Sides of Question 3 Agree Egg Prices Will Increase*, POLITICO (Sept. 20, 2016), <http://www.politico.com/states/massachusetts/story/2016/09/both-sides-of-question-3-agree-egg-prices-will-increase-105644> [https://perma.cc/3ZUX-YSVW] (accessed Apr. 9, 2017).

¹⁹ See Colman, *supra* note 14 (“Chad Gregory, the President of industry group United Egg Producers, said . . . ‘[b]ecause Massachusetts imports 99 percent of its eggs from other states, there is no question that this proposal, if passed, would have far-reaching, negative consequences for residents in the state who purchase and consume eggs.’”).

²⁰ Dezenski, *supra* note 18.

²¹ See Colman, *supra* note 14 (“[T]he egg industry contends the California law conflicts with the Constitution’s commerce clause. A federal court dismissed a challenge brought by six states in 2014, saying no party had standing, but other egg-producing states are appealing the ruling on the grounds that laws in one state cannot induce a regulatory effect on the same industry in other states or place a burden on interstate commerce.”).

²² See *id.* (“Big purchasers such as McDonald’s, Walmart, Denny’s, Burger King, Sodexo, and Aramark have committed to going cage-free, subsequently driving producers to alter their practices.”).

²³ See *id.* (“Animal welfare groups are targeting the purchasing power of liberal, coastal states to gain momentum for later pushes in agriculture-heavy states.”).

III. ENDANGERED SPECIES TRAFFICKING

A. Oregon

Following the passage of similar laws in California and Washington, Oregon voters overwhelmingly voted to ban the sale of products made from some of the world's most imperiled animals.²⁴ Effective January 1, 2017, Measure 100 bans intrastate sales, but not ownership, of any products made from tigers, rhinos, elephants, lions, cheetahs, jaguars, leopards, pangolins, whales, marine turtles, sharks, and rays.²⁵ The new law will impose “felony-level fines on anyone caught buying or selling the parts or products from those creatures.”²⁶ The law creates certain exceptions for musical instruments or antiques that are at least 100 years old.²⁷ Forbidding the trafficking of certain wildlife parts and products in Oregon will likely assist in the broader objective to target the illegal trade of ivory.²⁸

The victory comes after hundreds of volunteers gathered over 150,000 signatures from voters across the state to make the measure eligible for the ballot.²⁹ Measure 100 gained support from

[a] broad array of international, national, state and local organizations . . . including The Humane Society of the United States, the Oregon Coast Aquarium, Oregon Zoo Foundation, the Oregon Humane Society, Asian Pacific American Network of Oregon, WildAid, International Fund for Animal Welfare and the National Wildlife Federation.³⁰

Scott Beckstead, supporter of the initiative and senior Oregon state director for the Humane Society of the United States, remarked, “Oregon has a long and proud history of supporting wildlife conservation. With this sweeping victory, Oregon has set an important example for the rest of the nation and joins efforts around the world to protect im-

²⁴ *Oregonians Vote to Fight Wildlife Trafficking*, OR. METRO (Nov. 10, 2016), <http://www.oregonmetro.gov/news/oregonians-vote-fight-wildlife-trafficking> [https://perma.cc/F6CL-TY8E] (accessed Apr. 9, 2017); Kirsten Johnson, *Ige Signs Anti-Wildlife Trafficking Bill*, HAW. TRIB.-HERALD (July 1, 2016), <http://hawaiitribune-herald.com/news/local-news/ige-signs-anti-wildlife-trafficking-bill> [https://perma.cc/F5CY-HEEH] (accessed Apr. 9, 2017).

²⁵ *Id.*

²⁶ *Oregon Voters Overwhelmingly Pass Anti-Wildlife Trafficking Measure 100*, HUMANE SOC'Y U.S. (Nov. 8, 2016), http://www.humanesociety.org/news/press_releases/2016/11/oregon-voters-overwhelmingly.html [https://perma.cc/2LXQ-4ELH?type=image] (accessed Apr. 9, 2017) [hereinafter *Oregon Voters*].

²⁷ Jes Burns, *Oregon Measure Would Create United Front Against Animal Trafficking on West Coast*, OR. PUB. BROADCASTING (Oct. 18, 2016), <http://www.opb.org/news/series/election-2016/oregon-measure-would-create-united-front-against-animal-trafficking-on-west-coast/> [https://perma.cc/6833-VCSP] (accessed Apr. 9, 2017).

²⁸ See *id.* (stating the wildlife trade monitoring organization, Traffic, has flagged Portland, Oregon as having the second highest amount of ivory on the market but has released reports showing ivory availability to be dropping in states that have banned sales).

²⁹ *Oregon Voters*, *supra* note 26.

³⁰ *Id.*

periled animals”³¹ Oregon’s new law completes the 1,300-mile bulwark of West Coast states against wildlife traffickers.³²

B. *Hawai‘i*

With the signing of Senate Bill 2647, Hawai‘i, known as the “endangered species capital of the world,” passed the most comprehensive U.S. law targeting the illegal wildlife trade.³³ Hawai‘i is the third-largest market for ivory products in the United States, behind New York and California, and serves as a major port for imports, particularly from Asia.³⁴ A 2008 study by Care for the Wild International and Save the Elephants estimated that 89% of ivory sold on Oahu Island in Hawai‘i could have been made after 1989,³⁵ making the importation of the ivory items illegal.³⁶ The law extends beyond ivory, however, “ban[ning] sales of the parts and products of seventeen of the world’s most critically threatened, endangered, or protected species.”³⁷ Such species include sea turtles, rhinos, and whales.³⁸ The law excludes parts used for educational purposes or displayed in museums, as well as instruments containing less than 20% of an animal part, among other exclusions.³⁹

The new law, which went into effect immediately but will not be enforced until June 30, 2017,⁴⁰ comes after a 2014 bill that failed due to strong opposition from local ivory dealers.⁴¹ Advocates praised Sen-

³¹ *Id.*

³² Mark Hofberg, *Oregon Votes for Endangered Species*, INT’L FUND FOR ANIMAL WELFARE (Sept. 9, 2016), <http://www.ifaw.org/united-states/news/oregon-votes-endangered-species> [https://perma.cc/379H-3GAX] (accessed Apr. 9, 2017).

³³ *Hawai‘i Signs Nation’s Broadest Wildlife Trafficking Ban into Law*, HUMANE SOC’Y U.S. (June 30, 2016), http://www.humanesociety.org/news/press_releases/2016/06/hawaii-wildlife-trafficking-ban-063016.html [https://perma.cc/FG4P-WWUH?type=image] (accessed Apr. 9, 2017) [hereinafter *Humane Hawai‘i*].

³⁴ Jessica Else, *Hawai‘i Holds Strong Against Illegal Animal Trade*, GARDEN ISLAND (July 21, 2016), http://thegardenisland.com/news/local/crime-and-courts/hawaii-holds-strong-against-illegal-animal-trade/article_296ccb5f-c2f0-5de9-9230-bede6afc6c8e.html [https://perma.cc/8TKW-LTV4] (accessed Apr. 9, 2017).

³⁵ ESMOND MARTIN & DANIEL STILES, *IVORY MARKETS IN THE USA* 94 (2008), <http://savetheelephants.org/wp-content/uploads/2014/03/2008IvoryMarketsUSA.pdf> [https://perma.cc/2RSP-RLPD] (accessed Apr. 9, 2017).

³⁶ *Id.* at 5 (stating that though importation of post-1989 crafted ivory is illegal, any estimates of illegitimate ivory must be treated with caution due to the difficulty of properly dating ivory objects).

³⁷ *Ban on Wildlife Trafficking, Ivory Sales Passes Legislature*, MAUI NOW (May 4, 2016), <http://mauiNOW.com/2016/05/03/ban-on-wildlife-trafficking-ivory-sales-passes-legislature/> [https://perma.cc/G8LE-JQQD] (accessed Apr. 9, 2017) [hereinafter *Maui Now Ban*].

³⁸ Elly Pepper, *Hawaii Wildlife Trade Ban Bill Passes Senate*, NAT. RES. DEF. COUNCIL (Feb. 23, 2016), <https://www.nrdc.org/experts/elly-pepper/hawaii-wildlife-trade-ban-bill-passes-senate> [https://perma.cc/74GY-ZS2H] (accessed Apr. 9, 2017).

³⁹ Johnson, *supra* note 24.

⁴⁰ *Humane Hawai‘i*, *supra* note 33.

⁴¹ *Undercover Investigation Reveals Hawaii a Haven for Illegal Ivory*, HUMANE SOC’Y U.S. (Mar. 3, 2016), http://www.humanesociety.org/news/press_releases/2016/03/hawa

ate President Ron Kouchi and Senator Gilbert Keith-Agaran in securing the bill's passage.⁴² Jared Axelrod, government affairs manager of Paul G. Allen's Vulcan Inc., a group that supported the measure, stated, "The loss of species has significant and unpredictable consequences for the health of the planet. The passage of this legislation is an important step in stopping this race to extinction."⁴³ Hawai'i's commitment to ending the ivory trade follows in the footsteps of California, New Jersey, New York, and now Oregon, as well as the federal government, which under President Obama "announced a near-total ban in the interstate trade in ivory."⁴⁴ However, the federal government's opportunity to restrict illegal wildlife and ivory trade is limited; therefore, it is crucial that states participate in enforcement by passing their own laws restricting wildlife and ivory trade.⁴⁵

C. Connecticut

In response to the 'Cecil the Lion' controversy, Friends of Animals—an animal advocacy organization—is seeking to pass what is known as 'Cecil's law' in the Connecticut and New York state legislatures.⁴⁶ Senator Bob Duff will reintroduce Cecil's law in 2017, which was passed in the Connecticut state senate in 2016, but was never voted on by the house.⁴⁷ Cecil's law is a response to the African lion, Cecil, who was killed by an American dentist at a Zimbabwe national park in June 2015.⁴⁸ The law would "ban the importation, sale, possession and transportation of . . . 'The Big Five'."⁴⁹ "The Big Five" refers to those animals considered the most difficult to hunt: African elephants, lions, leopards, black rhinos, and white rhinos.⁵⁰

While the law's aim is to prevent the extinction of these critically endangered species, the law also seeks to punish trophy hunters.⁵¹ "Trophy Hunting is the practice of killing—or pursuing with the intent to kill—wild animals where the primary motivation is to obtain part of

ii-ivory-undercover-investigation-030316.html [https://perma.cc/25Q5-F7RX?type=image] (accessed Apr. 9, 2017).

⁴² *Maui Now Ban*, *supra* note 37.

⁴³ *Humane Hawai'i*, *supra* note 33.

⁴⁴ *Id.*

⁴⁵ See Pepper, *supra* note 38 ("Because the federal government cannot further restrict the trade of wildlife within a state . . . state bans are critically important to reducing U.S. demand for ivory, and, as a result, poaching in Africa.").

⁴⁶ See Erin Kayata, *Get to Know . . . Priscilla Feral and Nicole Rivard*, DARIEN NEWS (Jan. 4, 2017), <http://www.dariennews.com/news/article/Get-to-know-Priscilla-Feral-and-Nicole-Rivard-10834839.php> [https://perma.cc/R4QE-EP93] (accessed Apr. 9, 2017) ("Cecil's Law was passed in the Connecticut state senate but was never voted on by the house due to a discussion of budget issues.").

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *id.* ("For us, it's about showing people how horrific and prevalent trophy hunting is when introducing this law[.] . . . "Part of the group's push to end trophy hunting has to do with the threat of extinction of these species.").

the animal for display.”⁵² The United States is the world’s largest importer of hunting trophies with over 1.2 million animals imported between 2005 and 2014.⁵³ Yet, a 2015 poll by HBO Real Sports found that 86% of Americans oppose the sport of big game hunting.⁵⁴

The Humane Society of the United States issued a letter in support of Cecil’s law but made various recommendations for amendments to the language of the bill.⁵⁵ Antiques dealers in Connecticut are particularly concerned about the broad language of Cecil’s law and how the law may affect the antiques market.⁵⁶ Moving forward in its efforts to gain traction for the passage of Cecil’s law in Connecticut and New York, Friends of Animals is seeking the public’s help in contacting lawmakers and hopes to educate students at public schools about the perils associated with trophy hunting.⁵⁷ Friends of Animals believes success of the law in Connecticut and New York will be a strong starting point before introducing the bill in California and Texas.⁵⁸

D. Colorado

House Bill 16-1341 was introduced in Colorado’s House of Representatives on March 3, 2016,⁵⁹ with primary sponsorship from Representatives Ginal and McCann.⁶⁰ “The bill would make it illegal to

⁵² Letter from Annie Hornish, Conn. Senior State Dir., The Humane Soc’y of the U.S., to the Env’t Comm. 2 (Mar. 4, 2016) (on file with *Animal Law*).

⁵³ *Id.* at 3 (citing HUMANE SOC’Y U.S. & HUMANE SOC’Y INT’L., TROPHY HUNTING BY THE NUMBERS: THE UNITED STATES’ ROLE IN GLOBAL TROPHY HUNTING 1 (Feb. 2016)).

⁵⁴ *Id.* (citing 11/24: Americans Oppose Big Game Hunting . . . More Than Six in Ten Favor Legal Ban, MARIST POLL (Nov. 24, 2015), <http://maristpoll.marist.edu/tag/hboreal-sports/> [<https://perma.cc/T8B9-TK5S>] (accessed Apr. 9, 2017)).

⁵⁵ *See id.* at 1–2 (recommending (1) the definition of “Africa Big Five” to be in accordance with its traditional meaning which encompasses African buffalo, (2) the addition of an exception for “activity that is expressly authorized by federal law” in an effort to prevent state law from violating the Supremacy Clause of the U.S. Constitution, and (3) the express limitation of the bill to parts and products of the species and not live animals).

⁵⁶ W.A. Demers, *Antiques Dealers Oppose Connecticut Ivory Ban Bill*, ANTIQUES & ARTS WEEKLY (Mar. 9, 2016), <http://www.antiquesandthearts.com/antiques-dealers-rally-to-oppose-connecticut-billthat-would-make-possessing-ivory-a-felony/> [<https://perma.cc/K46D-LK46>] (accessed Apr. 9, 2017) (quoting antique business owner David Schorsch, “In my opinion, the proposed ban on ivory in Connecticut will take a devastating economic impact on a large number of honest and knowledgeable dealers, jewelers, auctioneers, museums, educational institutions and private citizens throughout the state—those who reputably inherit, buy and sell genuine antiques. . . . [I]t will inflict irreparable and permanent damage . . . to the cultural patrimony of our state and our country.”).

⁵⁷ Kayata, *supra* note 46.

⁵⁸ *Id.*

⁵⁹ *Protection Endangered Animals Poaching Trafficking—HB 16-1341*, DENV. POST (Nov. 29, 2016), http://extras.denverpost.com/app/bill-tracker/bills/2016a/hb_16-1341/ [<https://perma.cc/SM37-WMET>] (accessed Apr. 9, 2017) [hereinafter *Protection*] (“Colorado . . . HB 16-1341 . . . was postponed indefinitely by the Senate Committee on State, Veterans, & Military Affairs.”).

⁶⁰ H.B. 16-1341, 70th Gen. Assemb., 2d Reg. Sess. (Colo. 2016).

purchase, sell and distribute products made from [ten] endangered species in Colorado: elephants, rhinos, pangolins, lions, tigers, leopards, cheetahs, marine turtles, sharks, and rays.”⁶¹ The National Rifle Association (NRA) fiercely opposes the bill, claiming the bill would “punish law-abiding citizens who collect and trade ordinary items” and would prohibit “shark skin—a very common material used in belt and shoulder holster construction.”⁶² The NRA does not believe HB 1341 would “materially contribute” to the bill’s goal to stop poaching and the illegal trade of animal products.⁶³ On May 4, the bill was postponed indefinitely by the Senate Committee on State, Veterans, & Military Affairs.⁶⁴ The sponsor of the bill, Representative Beth McCann, “believes it was defeated because . . . the senate’s president viewed it as bringing about more regulations of business” and “many people don’t see the protection of endangered species as a priority for Colorado.”⁶⁵

IV. GOOD SAMARITAN HOT CAR LAWS

California, Massachusetts, Florida, Ohio, Vermont, and Wisconsin, following in the footsteps of Tennessee, adopted Good Samaritan laws concerning the rescue of an animal trapped inside a hot, unattended vehicle.⁶⁶ On an 80° F day, the temperature in a parked car can reach 120° F in only ten minutes; as a result, thousands of animals die from heatstroke every year after being left in hot, unattended cars.⁶⁷ For first time offenders, California’s state law imposes a \$100 fine and if the animal suffers great bodily injury, a \$500 fine, imprisonment for up to six months in a county jail, or both.⁶⁸ Jennifer Fearing, who has previously represented the Humane Society of the United States, the San Francisco SPCA, and Best Friends Animal Society, commented, “Our strongest hope is that this legislation will raise awareness about the dangers of leaving animals unattended in hot vehicles. We know

⁶¹ *H.B. 1341: A Bill Protecting Animal Species Threatened with Extinction by Prohibiting Trafficking*, BORN FREE USA, <http://www.bornfreeusa.org/legislation.php?p=5515&more=1&cat=106> [<https://perma.cc/ZC3A-4UHD>] (accessed Apr. 9, 2017).

⁶² *Colorado: Ivory and Animal Products Ban Legislation to be Considered in House Committee*, NAT’L RIFLE ASS’N INST. FOR LEGIS. ACTION (Apr. 13, 2016), <https://www.nra.org/articles/20160422/colorado-ivory-and-animal-products-ban-legislation-passes-house> [<https://perma.cc/T383-XAD2>] (accessed Apr. 9, 2017).

⁶³ *Id.*

⁶⁴ *Protection*, *supra* note 59.

⁶⁵ Toni Knapp, *Saving Wildlife: A Complicated Issue*, COLO. SPRINGS STYLE (Sept. – Oct., 2016), <http://www.coloradospringsstyle.com/September-October-2016/Saving-Wildlife/> [<https://perma.cc/2Z3M-AJQQ>] (accessed Apr. 9, 2017).

⁶⁶ *Overview of State Laws: Leaving Unattended Animals in Vehicles*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/cases-campaigns/action-alerts/dogs-in-hot-cars/overview-of-state-laws-leaving-unattended-animals-in-vehicles/> [<https://perma.cc/UP5S-C769>] (accessed Apr. 9, 2017) [hereinafter *Overview of State Laws*].

⁶⁷ Press Release, Cal. State Assembly Democratic Caucus, California Right to Rescue Act Passes Legislature (Aug. 25, 2016), <https://a53.asmdc.org/press-release/california-right-rescue-act-passes-legislature> [<https://perma.cc/U2ZS-QQHS>] (accessed Apr. 9, 2017).

⁶⁸ CAL. PENAL CODE § 597.7(c) (West 2017).

people don't mean to put their animals in jeopardy, but they often don't understand just how quickly the situation becomes dangerous and even deadly."⁶⁹

All six of the states allow a Good Samaritan to break into a vehicle to rescue an animal from a hot car, provided certain steps are followed.⁷⁰ These states allow a Good Samaritan, acting in good faith, to break into a vehicle to rescue an animal in imminent danger of suffering harm provided the vehicle is locked with no other reasonable means of escape, law enforcement is contacted prior to breaking in, the Good Samaritan stays with the animal in a safe location until law enforcement arrives, and no more force than necessary is used to rescue the animal.⁷¹ Ohio, Wisconsin, and Vermont additionally require a Good Samaritan to leave a note on the owner's vehicle.⁷² To the extent all of the required steps are followed, the Good Samaritan has no fear of facing civil liability.⁷³ California and Massachusetts expressly immunize a Good Samaritan rescuing an animal from a hot car from criminal liability as well.⁷⁴ However, in states not expressly limiting criminal liability, Good Samaritans could still be protected due to the lack of criminal intent in their actions.⁷⁵

Elyse Rathbone, Humane Agent, suggests using a cell phone to take pictures or video as documentation of the severity of the situation.⁷⁶ "You have to have reason to believe [the action] is necessary. It's going to be up to the judge and/or jury when you get to court whether you acted in an appropriate way. [Taking photos or videos] certainly goes a long way in helping to justify any action you take," said Lieutenant Joe Heffernan.⁷⁷ Ohio's statute expressly revokes im-

⁶⁹ Press Release, Cal. State Assembly Democratic Caucus, *supra* note 67.

⁷⁰ *Overview of State Laws*, *supra* note 66.

⁷¹ CAL. PENAL CODE § 597.7(b)(2)(A)–(E) (West 2017); FLA. STAT. § 768.139(2)(a)–(e) (2016); MASS. GEN. LAWS ANN. ch. 140, § 174F(e) (West 2016); OHIO REV. CODE ANN. § 959.133(A)(1)–(3), (5), (6) (LexisNexis 2016); VT. STAT. ANN. tit. 12, § 5784(1)–(4), (6) (2016); WIS. STAT. § 895.484(2)(a)–(e) (2015).

⁷² OHIO REV. CODE ANN. § 959.133(A)(4) (LexisNexis 2016); VT. STAT. ANN. tit. 12, § 5784(5) (2016); WIS. STAT. § 895.484(2)(f) (2015).

⁷³ CAL. PENAL CODE § 597.7(b)(2) (West 2017); FLA. STAT. § 768.139(2) (2016); MASS. GEN. LAWS ch. 140, § 174F(f) (2016); OHIO REV. CODE ANN. § 959.133(A) (LexisNexis 2016); VT. STAT. ANN. tit. 12 § 5784 (West 2016); WIS. STAT. § 895.484(2) (2015).

⁷⁴ CAL. PENAL CODE § 597.7(b)(2) (West 2017); MASS. GEN. LAWS ch. 140, § 174F(f) (2016).

⁷⁵ Dave Nethers, *Senate Bill Could Shield Good Samaritans from Liability for Saving a Child from Hot Car*, FOX 8 CLEV. (Sept. 24, 2015), <http://fox8.com/2015/09/24/senate-bill-could-shield-good-samaritans-from-liability-for-saving-a-child-from-hot-car/> [https://perma.cc/6T4B-UR4U] (accessed Apr. 9, 2017).

⁷⁶ *Ohio Governor Kasich Signs Bill Allowing Breaking into Hot Vehicles to Save Kids, Pets*, WCSH (June 1, 2016), <http://www.wlbz2.com/news/local/ohio-governor-kasich-signs-bill-allowing-breaking-into-hot-vehicles-to-save-kids-pets/226352493> [https://perma.cc/D97W-EHBW] (accessed Apr. 9, 2017).

⁷⁷ Alexandra Mester, *Law Lets Anyone Save Pets, Children from Hot Cars: Ohio's 'Good Samaritan' Measure Set to Take Effect*, BLADE (updated Aug. 6, 2016, 7:17 PM), <http://www.toledoblade.com/Politics/2016/08/06/Measure-lets-anyone-save-pets-children-from-hot-cars.html> [https://perma.cc/GWN4-6CH4] (accessed Apr. 9, 2017).

munity from liability for damage caused by reckless, willful, or wanton misconduct.⁷⁸ Therefore, a Good Samaritan seeking to rescue an animal must consciously follow all requirements of the state statute and must act within reason in order to be granted immunity from liability. Educating state citizens about the state's applicable laws with respect to forcible entry into a vehicle to rescue an animal will go a long way in ensuring well-intentioned persons do not end up facing personal liability for their actions.

V. ANIMAL CRUELTY REFORM

A. *Rhode Island*

In July, Rhode Island became the first state in the nation to ban the use of bullhooks on elephants.⁷⁹ “Resembling a fireplace poker,” bullhooks are used by handlers to hit and punish elephants to control them.⁸⁰ “For too long, elephants in travelling shows and circuses have suffered inhumane and cruel treatment by handlers wielding the sharp end of the bullhook,” said Nicole Paquette, Vice President of Wildlife Protection at the Humane Society of the United States.⁸¹ Some trainers are unhappy about the bill, one of which claims the bullhook is a “husbandry tool that is the gold standard for working elephants in free contact where humans and elephants share the same space.”⁸²

The measure follows on the heels of Ringling Bros.’ and Barnum & Bailey Circus’s initial decisions to remove performing elephants from its shows, due in part to the “public’s rapidly changing opinion about the use of wild animals for entertainment”⁸³ and “new laws that keep popping up in different cities designed to stop their shows from going on.”⁸⁴ Though reason to celebrate, animal activists are still concerned about retiring elephants that have been shipped to the Center for Elephant Conservation in Florida, where the elephants may still be sub-

⁷⁸ OHIO REV. CODE ANN. § 959.133(C) (LexisNexis 2016).

⁷⁹ *Rhode Island Becomes First State in Nation to Ban Use of Bullhooks on Elephants*, HUMANE SOC’Y U.S. (July 20, 2016), http://humanesociety.org/news/news_briefs/2016/07/rhode-island-bullhook-ban-072016.html [https://perma.cc/3L23-23KR?type=image] (accessed Apr. 9, 2017).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Aaron Claverie, *New Law Aims to Curb Use of Elephant Bullhooks*, PRESS ENTERPRISE (Aug. 30, 2016, 6:41 PM), <http://www.pe.com/articles/elephants-811968-use-johnson.html> [https://perma.cc/5C4H-MQ4F] (accessed Apr. 9, 2017).

⁸³ *California Bans Use of Bullhooks in Handling Captive Elephants*, HUMANE SOC’Y U.S. (Aug. 29, 2016), http://www.humanesociety.org/news/press_releases/2016/08/ca-bullhook-ban-law-082916.html [https://perma.cc/8L3Q-ZB2B?type=image] (accessed Apr. 9, 2017) [hereinafter *California Bans*].

⁸⁴ Alan Gomez, *Ringling Bros. Elephants Settle into Retirement*, USA TODAY (May 6, 2016), <http://www.usatoday.com/story/news/2016/05/05/ringling-bros-barnum-baily-circus-elephants-retire-sanctuary-florida/83973138/> [https://perma.cc/FSB9-ALX3] (accessed Apr. 9, 2016).

jected to the use of bullhooks and other harmful devices.⁸⁵ Ringling Bros. and Barnum & Bailey Circus's more recent decision to end its performances in May 2017⁸⁶ is cause for more concern regarding the future of the other wild animals historically used in their entertainment shows.

B. California

California Governor Jerry Brown joined Rhode Island by signing a measure that will take effect on January 1, 2018, prohibiting the use of bullhooks on captive elephants in California.⁸⁷ The measure, which "passed the Senate and Assembly by bipartisan votes of 27 to 10 and 65 to 7, respectively,"⁸⁸ builds on existing California law making it a misdemeanor to engage in abusive behavior toward an elephant.⁸⁹ A person who violates the ban on bullhooks may be "subject to civil penalties and revocation of their wild animal permit."⁹⁰ Governor Brown previously vetoed a similar bill in 2015 because it resulted in criminal, rather than civil, charges.⁹¹

The new law also "prohibits brandishing, exhibiting or displaying bullhooks and other devices such as a baseball bat, axe handle or pitchfork in the presence of an elephant."⁹² California Senator Andy Vidak voted "no" on the bill expressing concern about the retraining of elephants that were originally trained with the bullhook.⁹³ Gina Kinzley, lead elephant manager at the Oakland Zoo responded, stating that, "all but one of the elephants at the Oakland Zoo had originally been trained with a bullhook and all have responded extremely well to Protected Contact techniques . . . such as giving food as a reward."⁹⁴

⁸⁵ *Urge Ringling Bros. to Pull ALL ANIMALS off the Road and Send Them to True Sanctuaries!*, PETA, <http://www.peta.org/action/action-alerts/urge-ringling-bros-stop-cruel-elephant-acts-now/> [<https://perma.cc/P2G4-DF8P>] (accessed Apr. 9, 2017).

⁸⁶ Tony Marco & Azadeh Ansari, *Famed Ringling Bros. Circus Closing After More Than 100 Years*, CNN (Jan. 16, 2017), <http://www.cnn.com/2017/01/14/entertainment/ringling-circus-closing/> [<https://perma.cc/CX46-BC7T>] (accessed Apr. 9, 2017).

⁸⁷ *California Bans*, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ *S.B. 1062: Banning Weapons Used on Elephants [2016]*, BORN FREE USA (Aug. 29, 2016), <http://www.bornfreeusa.org/legislation.php?p=5408&more=1&cat=105> [<https://perma.cc/UCH9-GJXF>] (accessed Apr. 9, 2017).

⁹⁰ *Id.*

⁹¹ Brendan O'Brien & Nick Macfie, *California Governor Brown Signs Law Banning Use of Bullhooks on Elephants*, REUTERS (Aug. 30, 2016), <http://www.reuters.com/article/us-california-elephants-idUSKCN1150ET> [<https://perma.cc/4APQ-VYB7>] (accessed Apr. 9, 2017).

⁹² *Id.*

⁹³ *Update on the California Bullhook Ban*, MARCH FOR ELEPHANTS (June 16, 2016), <http://marchforelephants.org/update-on-the-california-bullhook-ban/> [<https://perma.cc/K8J9-4HXW>] (accessed Apr. 9, 2017).

⁹⁴ *Id.*

C. New Hampshire

Addressing the issue of animal sexual assault in New Hampshire, Governor Maggie Hassan signed a bill, sponsored by Representative Katherine Rogers, banning sexual contact with animals as well as the offering of an animal for sexual purposes.⁹⁵ The new law also requires an offender to register on the sex offender registry and participate in counseling.⁹⁶

In 2014, bestiality drew attention in New Hampshire after video clips of a man having sex with his dogs was discovered during a homicide investigation.⁹⁷ The man ultimately served a year in jail for animal cruelty but was not required to register as a sex offender.⁹⁸ Though the new law creates exceptions for medical procedures and commercial farming,⁹⁹ New Hampshire's farming community criticized the bill for "unnecessarily intrud[ing] into normal animal husbandry practices, the breeding of hybrids between species and the transfer of animals for breeding purposes."¹⁰⁰ A Virginia police detective stated, however, that he "[could not] foresee any reasonable prosecutor attempting to use [the] bill in that fashion."¹⁰¹

Prior to the signing of the bill, New Hampshire was one of ten states legally allowing the practice of bestiality, "creating a de facto haven for local and out-of-state perpetrators."¹⁰² With the passage of a similar bestiality law in Ohio, bestiality remains legal in the District of Columbia and eight states, including Hawai'i, Kentucky, Nevada, New Mexico, Texas, Vermont, West Virginia, and Wyoming.¹⁰³

⁹⁵ *New Hampshire Bans Animal Sexual Assault*, HUMANE SOC'Y U.S. (June 24, 2016), http://www.humanesociety.org/news/news_briefs/2016/06/nh-animal-sexual-assault-ban-062416.html [<https://perma.cc/B6KH-QDJG?type=image>] (accessed Apr. 9, 2017) [hereinafter *Humane NH bans*].

⁹⁶ *Id.*

⁹⁷ Jeremy Blackman, *Bill to Ban Bestiality Hits Resistance from New Hampshire Farming Reps*, CONCORD MONITOR (Mar. 1, 2016), <http://www.concordmonitor.com/Archive/2016/02/BestialityHearing-CM-030116> [<https://perma.cc/37JM-TSPW?type=image>] (accessed Apr. 9, 2017).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Dave Solomon, *Bill Would Specifically Prohibit Bestiality in Granite State*, UNION LEADER, <http://www.unionleader.com/Bill-would-specifically-prohibit-bestiality-in-Granite-State> [<https://perma.cc/88VS-4UHG>] (accessed Apr. 9, 2017).

¹⁰¹ Blackman, *supra* note 97.

¹⁰² *Id.*

¹⁰³ Adam Gabbatt, 'A Great Victory for Animals': Bestiality May Finally Be Outlawed in Ohio, GUARDIAN (Dec. 8, 2016), <https://www.theguardian.com/us-news/2016/dec/08/ohio-bestiality-bill-animal-cruelty-humane-society> [<https://perma.cc/YH8Y-UE4U>] (accessed Apr. 9, 2017).

D. Ohio

With the signing of H.B. 60, referred to as “Goddard’s Law,”¹⁰⁴ and S.B. 331, better known in the animal activist community as the ‘Petland bill,’¹⁰⁵ Ohio Governor John Kasich approved several laws relating to animal cruelty.

Representatives Dave Hall and Bill Patmon sponsored Goddard’s Law, named after Cleveland weatherman and animal activist, Dick Goddard.¹⁰⁶ The new law “makes it a fifth-degree felony to knowingly cause serious physical harm to a companion animal . . . [including] a substantial risk of death, a partial or permanent incapacity, long-term pain, or deprivation of food, water and shelter.”¹⁰⁷ The definition of “companion animal” was broadened to include not only animals in a residential dwelling but also animals kept inside pet stores.¹⁰⁸ A fifth-degree felony in Ohio is punishable by up to six months to one year in jail and a \$2,500 fine.¹⁰⁹

Goddard’s Law passed the Senate unanimously and the House concurred in a 92-1 vote.¹¹⁰ Ohio joined forty-seven other states that punish extreme acts of animal cruelty with felony-level penalties.¹¹¹ Joining state law enforcement in protecting animals from cruelty, the FBI has started tracking animal cruelty in its National Incident-Based Reporting System.¹¹² Northeastern University and the Massachusetts Society for the Prevention of Cruelty to Animals released a report finding “that a person who has committed abuse against an animal is five times more likely to commit violence against people.”¹¹³ Amy Beichler,

¹⁰⁴ Darcie Loreno & Lorrie Taylor, *Goddard’s Law Passes, Now Awaits Governor Kasich’s Signature*, FOX 8 CLEV. (May 26, 2016), <http://fox8.com/2016/05/25/ohio-senate-to-vote-today-on-goddards-law/> [https://perma.cc/XW7U-A535] (accessed Apr. 9, 2017).

¹⁰⁵ Randy Ludlow, *Kasich Signs 17 Bills, Including Concealed-Carry Expansion*, COLUMBUS DISPATCH (Dec. 19, 2106), <http://www.dispatch.com/content/blogs/the-daily-briefing/2016/12/12192016-kasich-signs-bills.html> [https://perma.cc/85X7-UELT] (accessed Apr. 9, 2017).

¹⁰⁶ Lorrie Taylor, *Huge Victory for Animal Rights as Goddard’s Law is Signed*, FOX 8 CLEV. (June 13, 2016), <http://fox8.com/2016/06/13/huge-victory-for-animal-rights-as-goddards-law-is-signed/> [https://perma.cc/LZ38-9FRA] (accessed Apr. 9, 2017).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Jackie Borchardt, *Ohio Lawmakers Pass ‘Goddard’s Law’ Making Pet Cruelty a Felony*, CLEVELAND.COM (May 25, 2016), http://www.cleveland.com/open/index.ssf/2016/05/ohio_lawmakers_pass_goddards_l.html [https://perma.cc/XLT6-GF9N] (accessed Apr. 9, 2017).

¹¹⁰ *Id.*

¹¹¹ *Ohio Lawmakers Make Torture of a Companion Animal a Felony Offense*, HUMANE SOC’Y U.S. (June 13, 2016), http://www.humanesociety.org/news/press_releases/2016/06/ohio-felony-companion-animal-torture-061316.html [https://perma.cc/YET8-LBQK?type=image] (accessed Apr. 9, 2017).

¹¹² Michael Walsh, *Ohio to Make First-Offense Pet Cruelty a Felony with ‘Goddard’s Law’*, YAHOO NEWS (May 26, 2016), <http://www.yahoo.com/news/ohio-to-make-first-of-fense-pet-cruelty-a-felony-with-goddards-law-211516888.html> [https://perma.cc/55WD-32DP] (accessed Apr. 9, 2017).

¹¹³ Taylor, *supra* note 106.

director of Public Animal Welfare Society in Ohio and supporter of Goddard's Law, urges "animal rights advocates to educate the public . . . [with the hope] that the threat of a felony will deter people from intentionally harming animals."¹¹⁴

Another bill signed in 2016 by Governor Kasich also relates to animal cruelty but was not met with a positive response from the animal rights community.¹¹⁵ Senate Bill 331, known as the 'Petland bill,' was criticized by animal rights groups as a bill that would ban local government from creating its own ordinances governing puppy mill operations.¹¹⁶ The Humane Society of the United States, a staunch opponent of the bill, claimed "the true intention of [S.B. 331] is not to regulate the problematic and controversial pet stores in Ohio that sell puppy mill puppies, but rather to protect this industry by taking away localities' rights to cut off the puppy-mill pet store supply chain."¹¹⁷ Prior to the passage of the bill, only two municipalities in Ohio had ordinances in place banning the sale of puppies from puppy mills.¹¹⁸

Petland, a national pet store chain with seventeen locations in the state of Ohio,¹¹⁹ pushed for the passage of the bill after Grove City approved a local ordinance blocking the store from purchasing its animals from large-scale breeders.¹²⁰ Elizabeth Kumzelman, Petland director of public affairs, argued, "[It is impossible to] operate our business with seventeen different sets of rules in the state." Another Petland spokesman, Mike Gonidakis, defended the bill, explaining that Petland needed to be able to work with all potential breeders to keep 600 employees in Ohio employed and still offer purebred puppies to customers.¹²¹

Opponents are concerned about a loophole in the bill allowing pet stores to obtain puppies from unregulated and unlicensed puppy mills, as well as USDA-licensed breeders who have not 'directly' violated USDA standards and do not have three or more 'indirect' violations.¹²²

¹¹⁴ Walsh, *supra* note 112.

¹¹⁵ Liam Niemeyer, *Animal Rights Groups Try to Block 'Petland Bill,'* WCPO CIN. (Nov. 27, 2016), <http://www.wcpo.com/news/state/state-ohio/animal-rights-groups-try-to-block-peland-bill> [<https://perma.cc/HD2N-W38A>] (accessed Apr. 9, 2017) ("Ohio animal rights groups are up in arms about a bill moving through the Ohio House that they say will protect puppy mills and the pet store corporations that are accused of using them.").

¹¹⁶ *Id.*

¹¹⁷ *Regulate Dog Sales and License Pet Stores: Hearing on S.B. 331 Before the S. Finance Comm.*, 131st Gen. Assemb., Reg. Sess. (2016) [hereinafter *Hearing*] (statement of Amy Jesse, Puppy Mills Policy Coordinator, Humane Society of the U.S.).

¹¹⁸ Niemeyer, *supra* note 115.

¹¹⁹ *Id.*

¹²⁰ Jim Siegel, *Lawmakers Use Petland Bill to Ban Ohio Cities from Upping Minimum Wage*, COLUMBUS DISPATCH (Dec. 7, 2016), <http://www.dispatch.com/content/stories/local/2016/12/06/lawmakers-set-to-ban-ohio-cities-from-increasing-minimum-wage.html> [<https://perma.cc/2CE7-NSS4>] (accessed Apr. 9, 2017).

¹²¹ Niemeyer, *supra* note 115.

¹²² *Hearing*, *supra* note 117.

Additionally, opponents claim enforcement of the bill will be nearly impossible due to the requirement that a pet store owner or employee negligently violate the law.¹²³ The measure ultimately passed the House and Senate with votes of 55-42 and 21-10, respectively.¹²⁴

In a bittersweet ending, the passage of the so-called 'Petland bill' also made bestiality a crime in Ohio.¹²⁵ The new law prohibits a person from engaging in sexual activities with animals as well as selling or purchasing animals for sexual purposes.¹²⁶ Offenders may have their animal seized and be required to partake in psychological evaluation or counseling.¹²⁷

VI. ORCA AND CETACEAN PROTECTION

A. California

California Governor Jerry Brown signed into law the Orca Protection and Safety Act (Act),¹²⁸ a measure banning the breeding of captive killer whales as well as orca performances for entertainment purposes.¹²⁹ The Act provides the option to transfer orcas from California to another facility in North America¹³⁰ which should "facilitate ongoing efforts to develop seaside sanctuaries for these animals as an alternative to living in tanks," said Dr. Lori Marino, President of the Whale Sanctuary Project.¹³¹ Additionally, the Act will still allow "educational presentations," defined as "a live, scheduled orca display in the presence of spectators that includes natural behaviors, enrichment, exercise activities, and a live narration and video content that provides

¹²³ *Id.*

¹²⁴ S. 331, 131st Gen. Assemb., Reg. Sess. (Ohio 2017).

¹²⁵ See Siegel, *supra* note 120 ("Republicans made the bill tougher to vote against by tacking on a bill that those same advocates support—making bestiality a crime in Ohio.").

¹²⁶ Alexandra Montgomery, *Bestiality Is Finally Illegal in Ohio*, WTOL 11 (Dec. 21, 2016), <http://www.wtol.com/story/34110006/bestiality-is-finally-illegal-in-ohio> [https://perma.cc/MRA9-PY37] (accessed Apr. 9, 2017).

¹²⁷ *Id.*

¹²⁸ Kristin Hugo, *Orca Shows and Breeding Banned in California*, NAT'L GEOGRAPHIC (Sept. 14, 2016), <http://news.nationalgeographic.com/2016/09/california-bans-SeaWorld-orca-breeding-entertainment/> [https://perma.cc/AY7H-QH8W] (accessed Apr. 9, 2017).

¹²⁹ David Kirby, *California Lawmakers Pass Bill Banning Orca Shows, Captive Breeding*, TAKEPART (Aug. 26, 2016), <http://www.takepart.com/article/2016/08/26/california-lawmakers-pass-bill-banning-orca-shows-captive-breeding> [https://perma.cc/FLF2-CW45] (accessed Apr. 9, 2017).

¹³⁰ CAL. FISH AND GAME CODE § 4502.5(a)(4) (West 2016) ("It is unlawful to do . . . the following: . . . export, transport, move or sell an orca located in the state to another state or county unless otherwise authorized by federal law or if the transfer is to another facility within North America that meets standards comparable to those provided under the Animal Welfare Act.").

¹³¹ Michael Mountain, *The Orca Protection Act*, WHALE SANCTUARY PROJECT (Sept. 13, 2016), <http://www.whalesanctuaryproject.org/2016/09/13/the-orca-protection-act/> (accessed Jan. 10, 2017).

science-based education to the public.”¹³² SeaWorld intends on incorporating these “educational orca encounters” sometime in 2017.¹³³

Assembly member Richard Bloom, who successfully introduced the Orca Protection and Safety Act, previously attempted in 2014 to introduce a bill requiring all killer whales located in California to be sent to sea sanctuaries.¹³⁴ SeaWorld opposed the 2014 measure and the bill was subsequently tabled.¹³⁵ The new Act will allow the eleven orcas currently housed at SeaWorld to be ‘grandfathered in’ and SeaWorld currently has no intention to return the eleven orcas to the wild.¹³⁶

Prior to the introduction of the Act, Seaworld had already agreed to discontinue breeding their orcas in all of their parks after the 2013 documentary *Blackfish* was released, exposing the negative effect of captivity on orcas.¹³⁷ Though SeaWorld was already committed to making many of the changes laid out in the Act, the Act now legally binds SeaWorld to its promise and ensures that no other park in California can breed orcas or provide non-educational shows in the future.¹³⁸ Courtney Vail, campaign and programs manager at Whale and Dolphin Conservation, is hopeful California’s legislation will inspire a global movement to end orca captivity, commenting, “[i]ncremental progress is how the world will change.”¹³⁹

B. Washington

Washington State Senators Kevin Rankor and Christine Rolfes are seeking to pass a bill modeled after the California Orca Welfare and Safety Act that will extend beyond orcas to all cetaceans.¹⁴⁰ On February 2, 2016, a hearing on H.B. 2888 was held before the House Committee of Agriculture and Natural Resources and the House later passed the bill with a vote of 64-33.¹⁴¹ However, the bill was stuck in the Senate when the session ended.¹⁴²

Currently, no captive cetaceans are present in the state of Washington—the proposed bill seeks to prevent the return of cetaceans to the state.¹⁴³ Former Washington Secretary of State, Ralph Munro,

¹³² CAL. FISH AND GAME CODE § 4502.5(d)(1).

¹³³ Hugo, *supra* note 128.

¹³⁴ Kirby, *supra* note 129.

¹³⁵ *Id.*

¹³⁶ Hugo, *supra* note 128.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ David Kirby, *California Makes New Move to Ban Orca Captivity*, TAKEPART (June 21, 2016), <http://www.takepart.com/article/2016/06/21/california-moves-ban-orca-captivity> [https://perma.cc/KJV2-GZ45] (accessed Apr. 9, 2017).

¹⁴⁰ *Cetacean Anti-Captivity Legislation*, ANIMAL WELFARE INST., <http://awionline.org/content/cetacean-anti-captivity-legislation> [https://perma.cc/W9Y5-Y7TA] (accessed Apr. 9, 2017).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

who witnessed whales being taken from the Olympia Harbor in the 1970s, commented on the bill: “(It’s) time for all Americans to know the state of Washington, which knows more about killer whales than any other state, is now stepping forward for a new standard in America.”¹⁴⁴ Those opposing the bill argue for the need of zoos and aquariums for education and scientific purposes.¹⁴⁵ It remains unseen whether Washington legislators will take up the bill again in 2017.

¹⁴⁴ *Washington State Senate Considers Banning Orca and Dolphin Shows*, ANIMAL NEWS NW. (Feb 5, 2015), <http://animalsnorthwest.com/2015/02/05/washington-state-senate-hears-proposal-banning-orca-and-dolphin-shows/> (accessed Apr. 9, 2017) (alteration in original).

¹⁴⁵ *Id.*