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Legal Issues in Animal Welfare: Farm Animal Confinement

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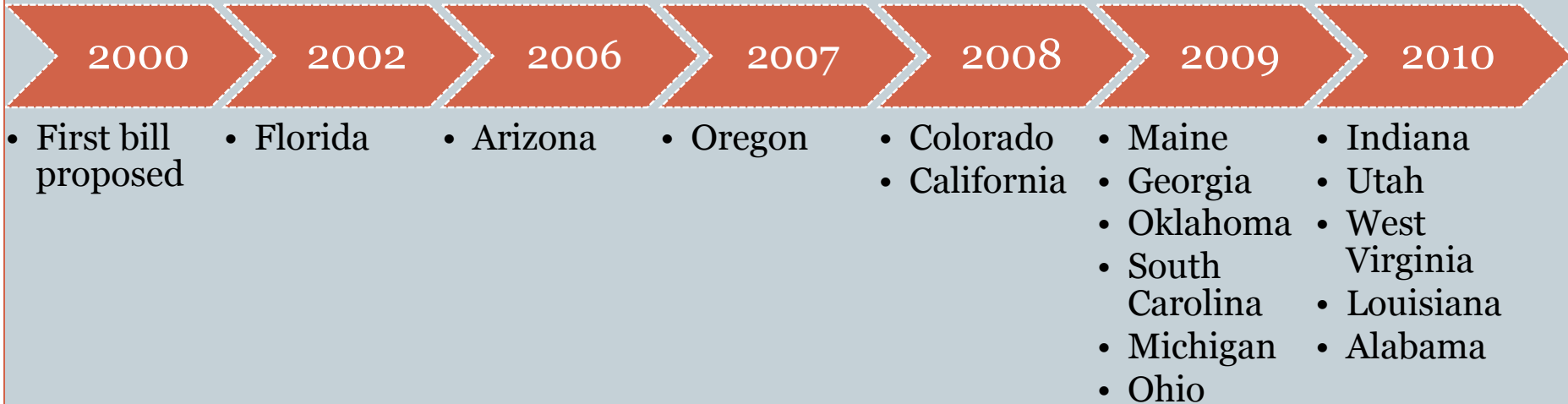
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Typical Language



- Covers up to three animals:
 - Laying hens
 - Pregnant sows
 - Veal calves
- Typically make it unlawful to prevent the animal from:
 - “lying down, standing up and fully extending limbs or turning around freely”
- Range of criminal/civil penalties

Timeline of Farm Animal Confinement Laws















Passage Dates

Statutory Evolution



- **FL:** Unlawful to confine/tether so pig cannot turn around freely
- **OR, AZ:** Addition of veal calves; also unlawful to “prevent animal from lying down and fully extending limbs”
- **CO:** Also unlawful to prevent animal from “standing up”
- **CA:** Addition of laying hens; offenders may be charged under general animal welfare laws, governing bodies are specifically allowed to adopt and enforce their own animal welfare laws and regulations
- **ME:** The use of best management practices is not an affirmative defense.
- **MI:** Hens must have access to at least one square foot of floor space per bird

Overview of Penalties

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

Timelines



2008

- Florida

2011

- Maine

2012

- Arizona
- Oregon
- Colorado veal
- Michigan veal

2015

- California

2018

- Colorado sows

2019

- Michigan hens & sows

Effective Dates

“Ag Response” Statutes: Local Government



- Generally:
 - Statutes prevent local governments from adopting rules & regulations regulating animal husbandry practice.
- Instead, the power to regulate animal husbandry is reserved to different state bodies
 - Authority reserved to state legislature
 - ✦ Georgia & South Carolina
 - Authority reserved to Department of Agriculture
 - ✦ Oklahoma
 - Authority reserved to state veterinarian
 - ✦ Alabama

“Ag Response” Statutes: Welfare Boards



- First passed in Ohio in response to demands that the legislature pass a confinement law or HSUS would bring a CA-style ballot proposal in the state.
- Since then, similar boards are in place in:
 - Indiana, 2010
 - West Virginia, 2010
 - Louisiana, 2010
 - Utah, 2010
 - Kentucky, 2011
 - Vermont, 2012
 - Illinois, 2012

Ohio Model



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

“Phase 2” Proposals

California, 2010



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

Washington & Oregon, 2011



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

HSUS/UEP Agreement



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

Feuding Farm Bill Amendments



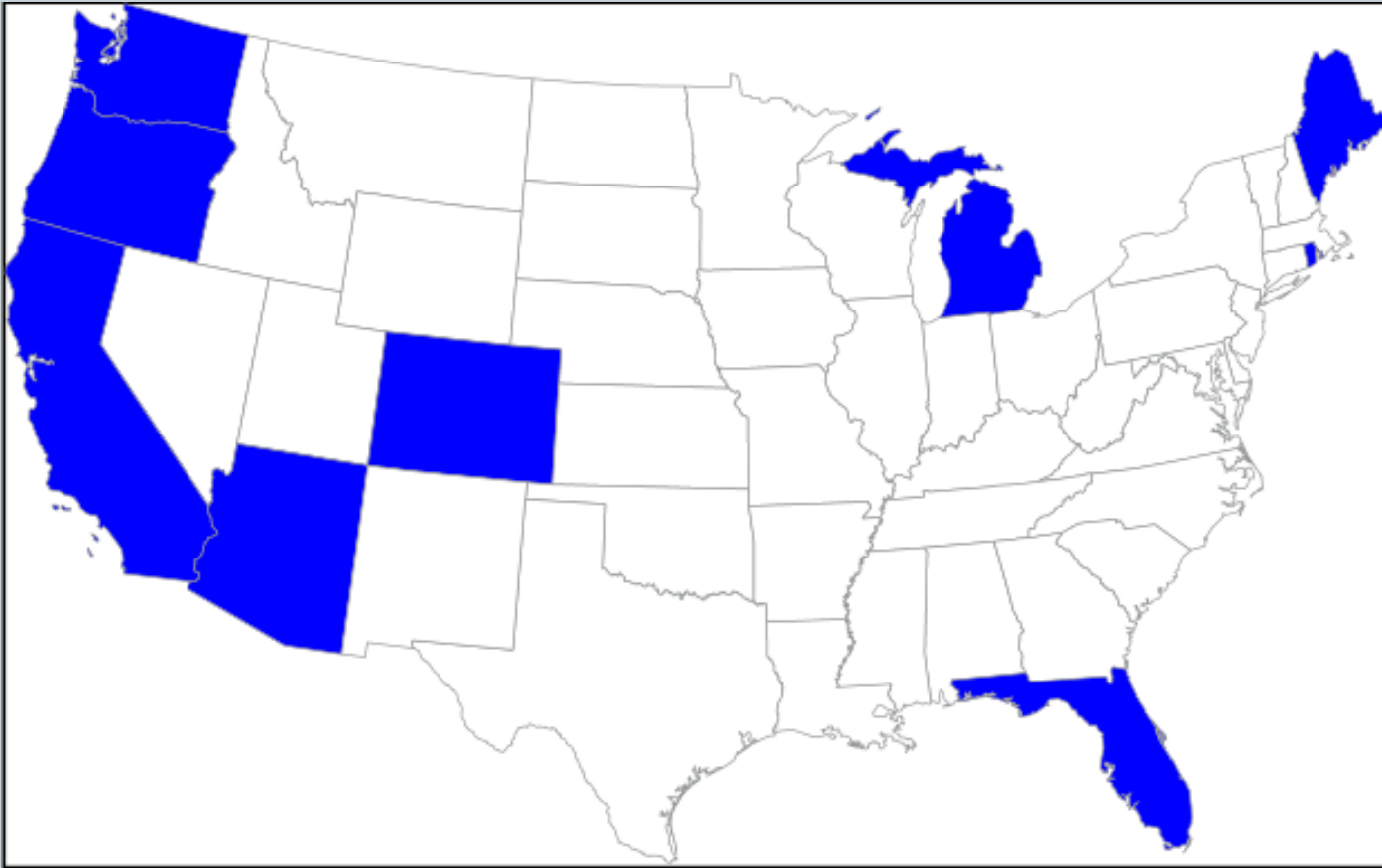
- Proposed amendments to include HSUS/UEP agreement language in farm bill proposals in House and Senate
 - At one point, the Chair of the Senate Ag Committee (Debbie Stabenow (D-MI)) wanted it included in the farm bill proposal.
 - As of 5/16/13, it is not part of either the House or the Senate farm bill proposals
- Amendment to the House farm bill proposal from Steve King (R-IA) “prohibits states from enacting laws that place conditions on the means of production for agricultural goods that are sold within its own borders, but are produced in other states.”
 - Called the “Protect Interstate Commerce Act”
 - Aimed at laws like CA’s that require out of state producers to comply with CA standards before they can sell eggs in CA.
 - Passed on voice vote for inclusion in House proposal: 5/15/13

Past, Present... Future?

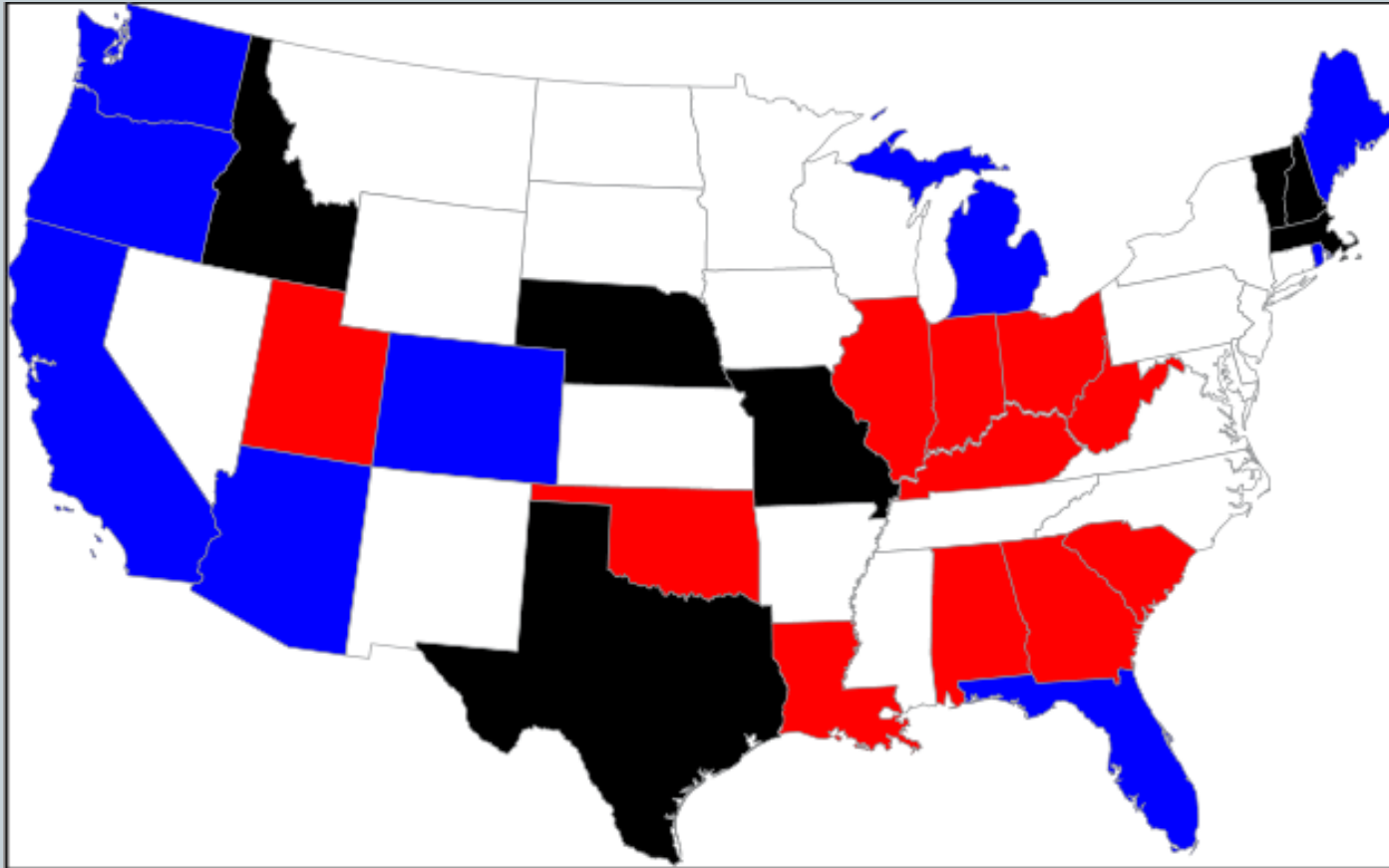


Blue:

Current
Confinement
Statutes



Past, Present... Future?



Blue:

Current
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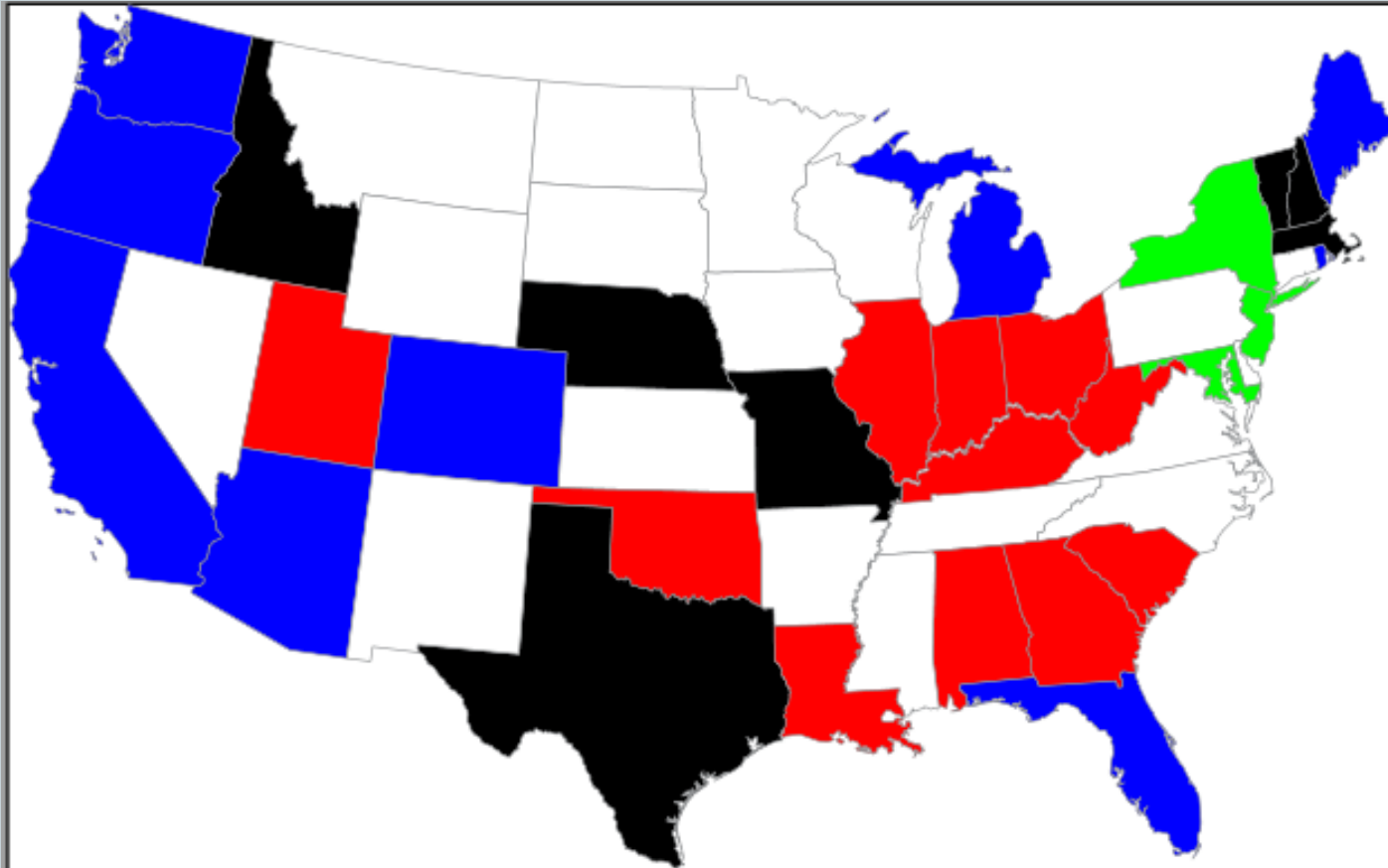
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Past, Present... Future?



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A federal judge in California recently dismissed a constitutional challenge to that state's "Proposition 2," a ballot initiative that addressed the confinement of laying hens, veal calves, and pregnant sows. To read the language of state statutes that have been enacted addressing farm animal confinement, [click here](#).

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September 26, 2012

@barmedia @AgCouncilofAr Nat'l Ag Law Center and Nat'l Assoc. of State Depts. of Agriculture form new partnership. <http://t.co/1sOLTXX2f>

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