



# The National Agricultural Law Center

The Nation's Leading Source of Agricultural and Food Law Research and Information

[www.nationalaglawcenter.org](http://www.nationalaglawcenter.org)

## **Legal Issues in Animal Welfare: Farm Animal Confinement**

**ELIZABETH RUMLEY  
STAFF ATTORNEY**

**(479) 387-2331**

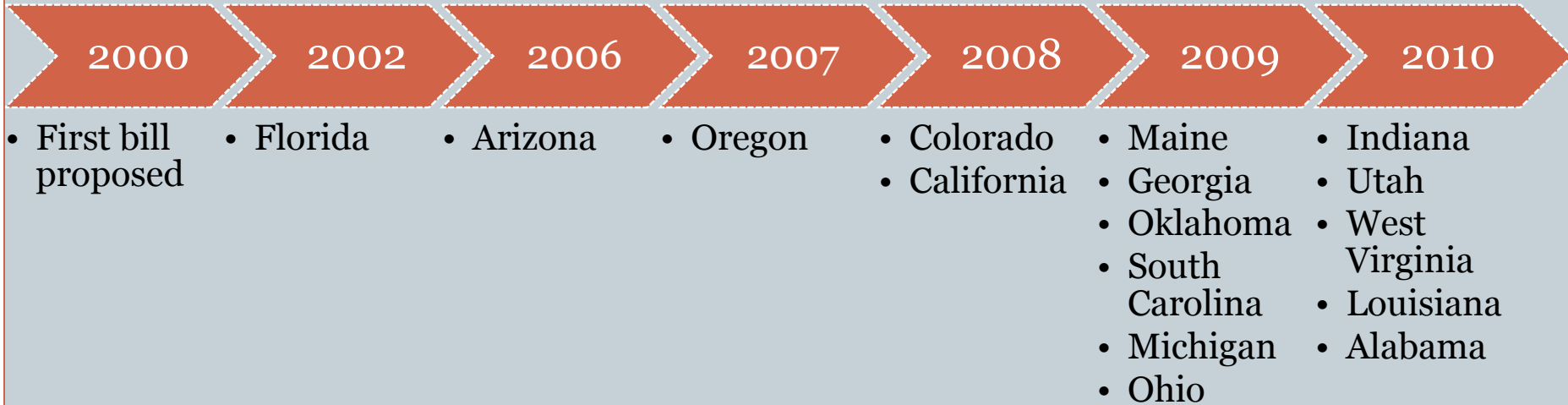
**[erumley@uark.edu](mailto:erumley@uark.edu)**

# 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

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



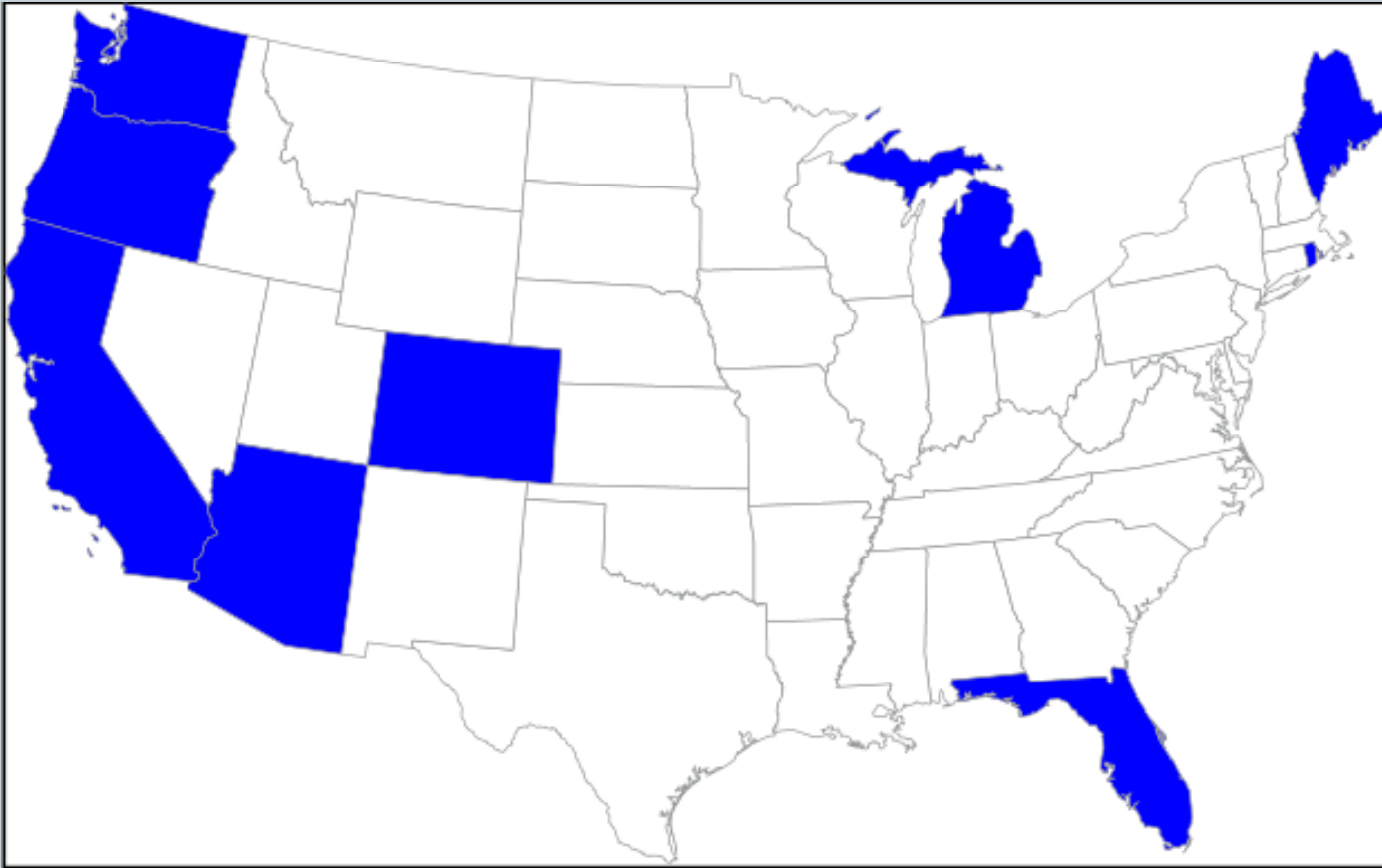
- Proposed amendments to include HSUS/UEP agreement language in farm bill proposals in House and Senate
  - At one point, the Chair of the Senate Ag Committee (Debbie Stabenow (D-MI)) wanted it included in the farm bill proposal.
  - As of 5/16/13, it is not part of either the House or the Senate farm 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?

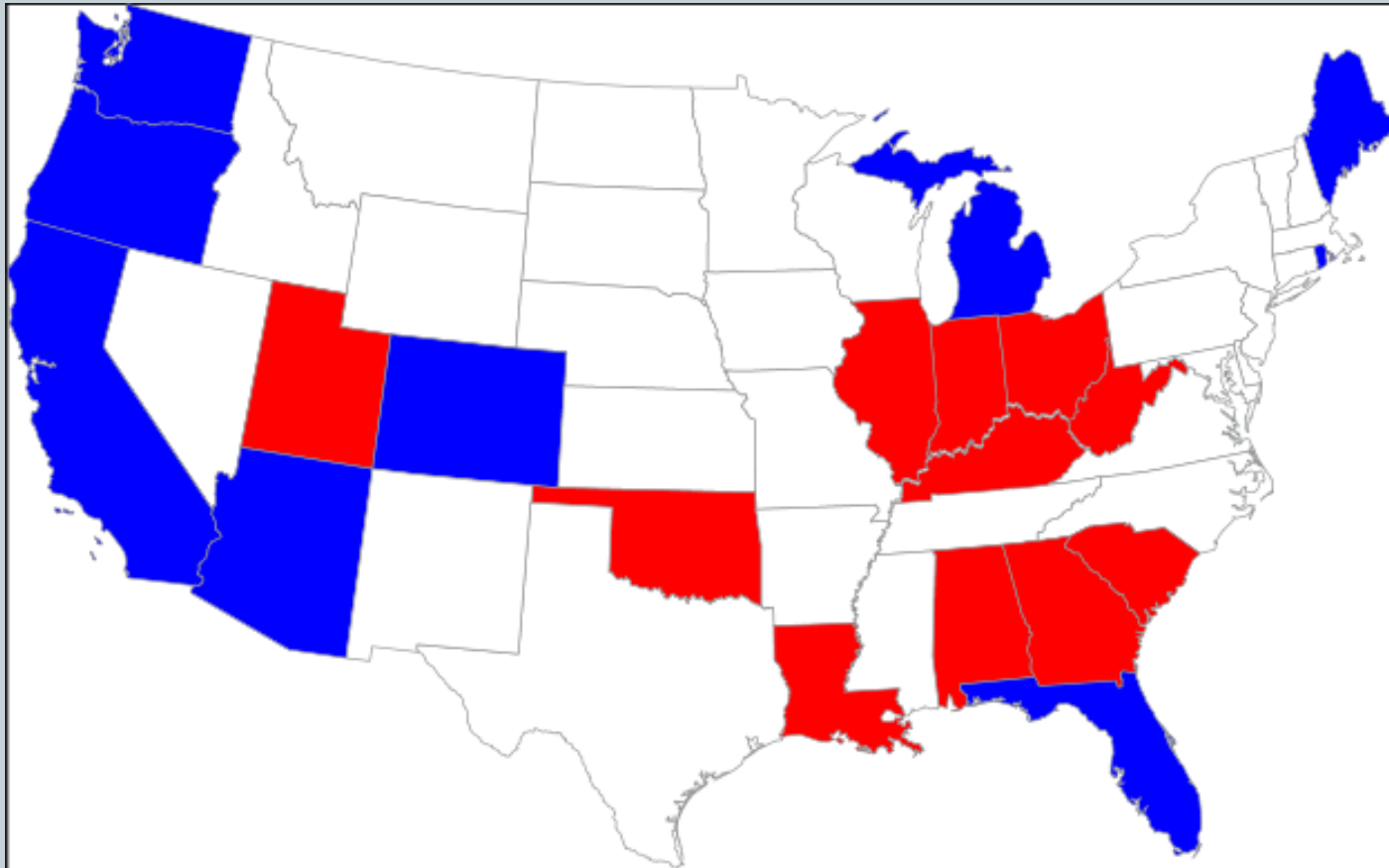


**Blue:**

Current  
Confinement  
Statutes



# Past, Present... Future?



**Blue:**

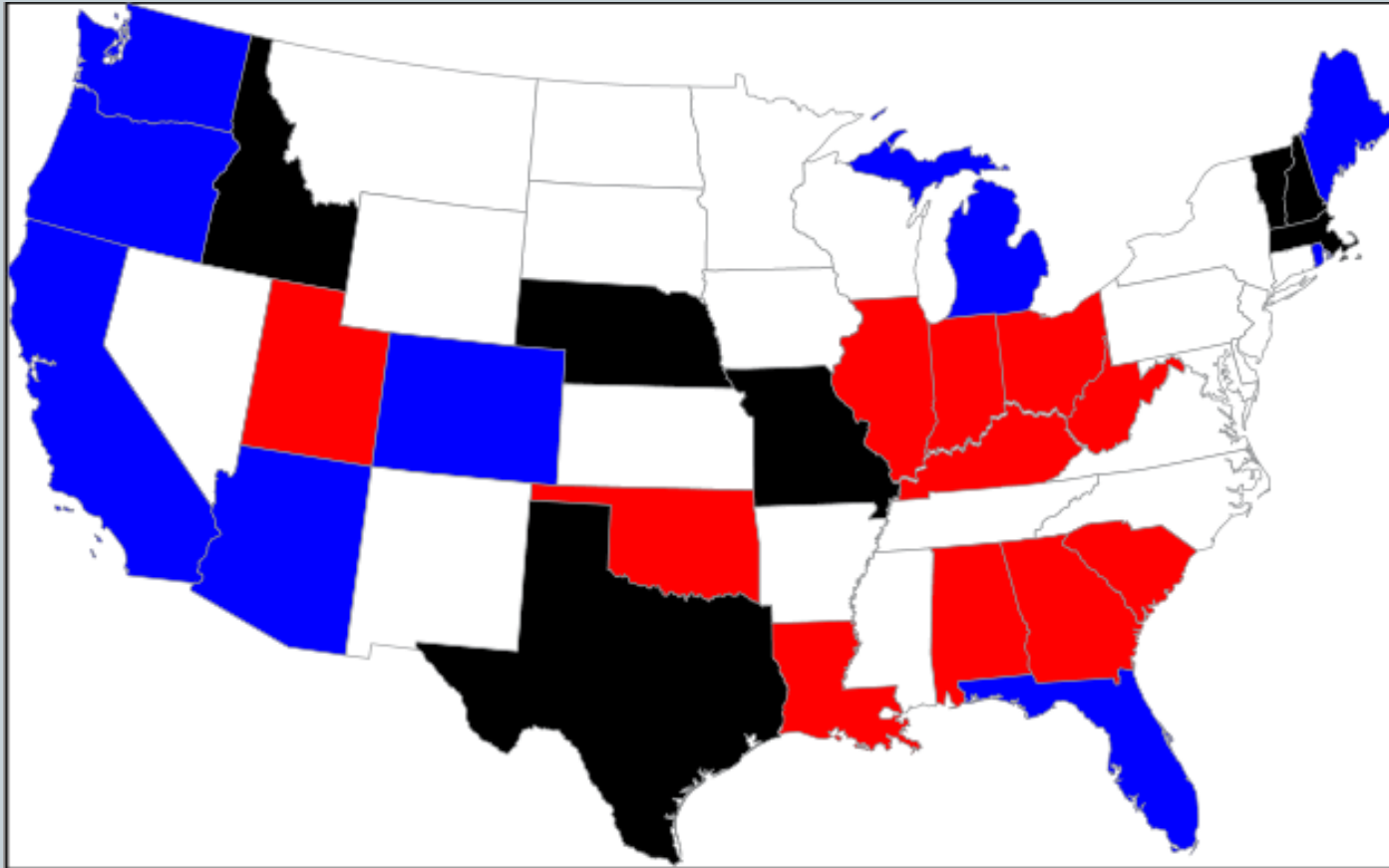
Current  
Confinement  
Statutes

**Red:**

Ag-  
Response  
Statutes



# Past, Present... Future?



**Blue:**

Current  
Confinement  
Statutes

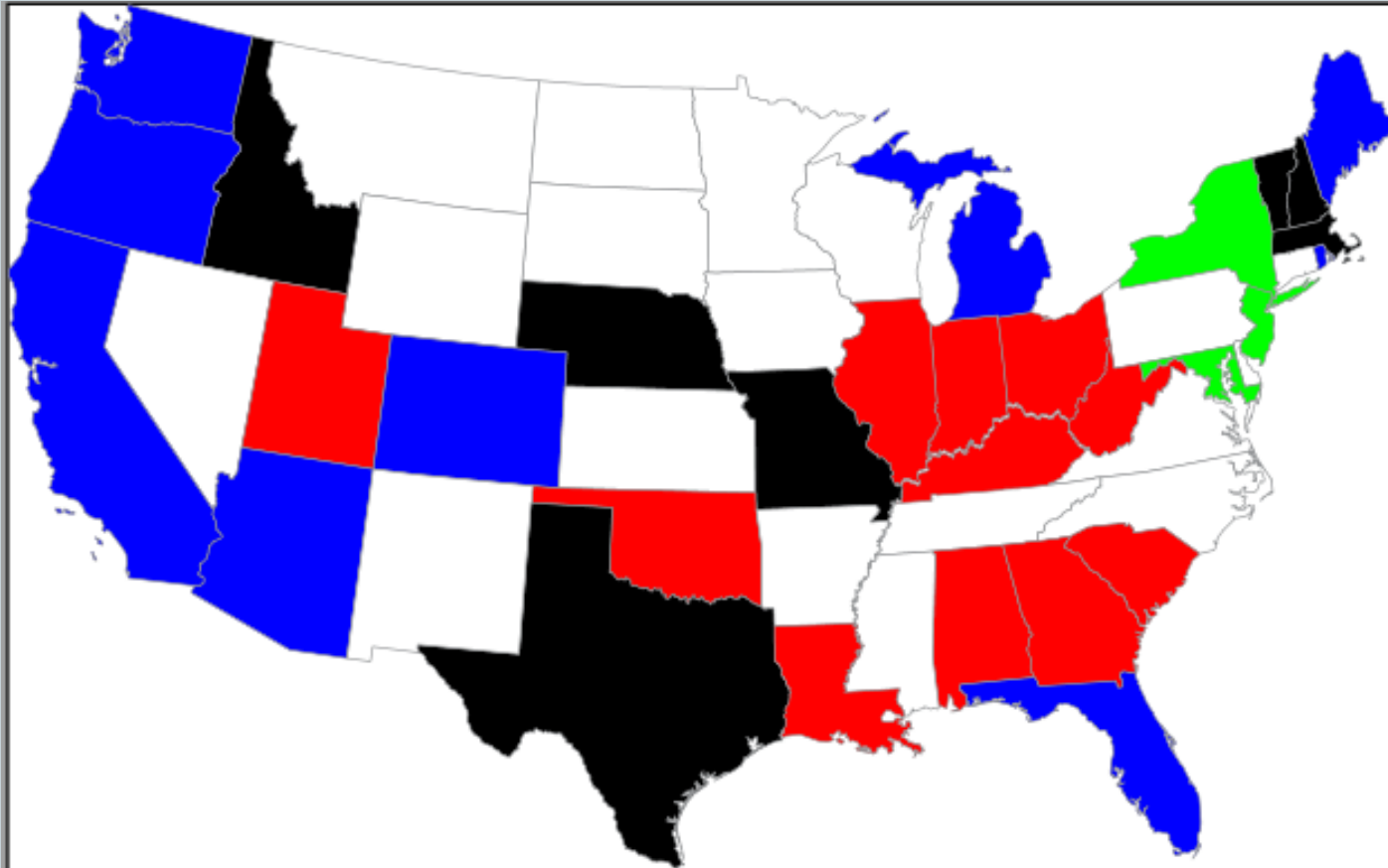
**Red:**

Ag-  
Response  
Statutes

**Black:**

Inactive  
Proposed  
Legislation

# Past, Present... Future?



**Blue:**

Current  
Confinement  
Statutes

**Red:**

Ag-  
Response  
Statutes

**Black:**

Inactive  
Proposed  
Legislation

**Green:**

Active  
Proposed  
Legislation



# The National Agricultural Law Center

The Nation's Leading Source of Agricultural and Food Law Research and Information

About the Center

Research by Topic

Center Publications

AgLaw Reporter

Farm Bill Resources

Ag Law Glossary

Ag Law Bibliography

Cong. Res. Serv. Reports

Center Outreach

General Resources

State Compilations

eXtension

Disclaimer



Located in Fayetteville, Arkansas, the National Agricultural Law Center serves the nation's vast agricultural community and is a key partner of the USDA National Agricultural Library. For more information, [click here](#).



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](#).

Twitter @nataglaw

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>

Ag and Food Law Blog

National Association of State Departments of Agriculture and the National Agricultural Law Center Form New Partnership  
25 September 2012

In order to enhance their similar missions, the National Agricultural Law Center (NALC) and the Nat [...]

HSUS Files Suit Against NPPC Funding  
24 September 2012

Earlier today, the Humane Society of the United States (HSUS) filed suit against the United States D [...]

[www.nationalaglawcenter.org](http://www.nationalaglawcenter.org)

# The National Agricultural Law Center



*Comprehensive compilation of specific agricultural and*

Google™ Custom Search

Search

Site Map

Disclaimer

Recent Web Postings

Welcome to the National AgLaw Center's electronic resources for an agricultural law Center-published research article; each room is an overview article that is located on the left side of each reading room.

Periodic browsing of our Reading Rooms is ongoing.

- **Administrative Law**
- **Animal Identification**
- **Aquaculture**
- **Biosecurity**
- **Business Orgs**
- **Clean Water Act**
- **Commercial Trans.**
- **Conservation Programs**
- **Cooperatives**
- **Disaster Asst/Crop Ins**
- **Estate & Taxation**
- **Food Labeling**
- **International Law**
- **Labor**
- **Landowner Liability**
- **Local Food Systems**
- **Nat'l Organic Program**
- **Packers & Stockyards**
- **Pesticides**
- **Renewable Energy**
- **Specialty Crops**
- **Urbanization & Ag**
- **Agritourism**
- **ADR**
- **AFOs**
- **Animal Welfare**
- **Bankruptcy**
- **Biotechnology**
- **Checkoff**
- **Climate Change**
- **Commodity Programs**
- **Corp. Farming**
- **COOL**
- **Environmental Law**
- **Finance & Credit**
- **Food Safety**
- **International Trade**
- **Marketing Orders**
- **Nutrition Programs**
- **PACA**
- **Production Contracts**
- **Secured Trans.**
- **Sustainable Ag**
- **Water Law**

*Comprehensive compilations of electronic resources and overview articles for specific agricultural and food law topics.*

Google™ Custom Search

Search

Website Guide

Disclaimer

Recent Web Postings

Newsletter

Ag & Food Law Blog

Administrative Law

Agriculturism

Alternative Dispute Resolution

Animal Feeding Operations

Animal Identification

Animal Welfare

Aquaculture

Bankruptcy

Biosecurity

Biotechnology

Business Organizations

- **Overview**
- **Major Statutes**
- **Regulations**
- **Case Law Index**
- **Center Research Publications**
- **Congressional Research Service Reports**
- **Agricultural Law Bibliography**
- **Reference Resources**
  - **Governmental Agency Resources**
  - **Congressional Resources**
  - **International Resources**
  - **Publications**
  - **Additional Resources**



**Contact  
Information:**



The National Agricultural Law Center

The Nation's Leading Source of Agricultural and Food Law Research and Information

Elizabeth R. Rumley

Phone: (479) 387-2331

Email: [erumley@uark.edu](mailto:erumley@uark.edu)

[www.nationalaglawcenter.org](http://www.nationalaglawcenter.org)