

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK  
CITY BAR

**ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK**  
42 WEST 44<sup>th</sup> STREET  
NEW YORK, NY 10036-6689

**COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**H.R. 503 (Rep. Schakowsky – pending in Subcommittee on Livestock, Dairy & Poultry).  
S.311 (Sen. Landrieu – voted favorably to Legislative Calendar)**

A bill to amend the Horse Protection Act (15 U.S.C. §§1821-1831) to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

**THIS BILL IS APPROVED**

This pending legislation, known as the American Horse Slaughter Prevention Act, was introduced in the House of Representatives and the Senate on January 17, 2007. The bills are identical and are hereafter referred to as “H.R.503/S.311”.

H.R.503/S.311 bans activities, such as sales and transportation, that lead up to the slaughtering of horses that are destined for human consumption. These activities would be added to the Horse Protection Act (15 U.S.C. §§1821-1831) and invoke the penalties provided for in §1830 of that law.

This act is essential towards a complete, permanent abolition of a cruel enterprise: the painful transportation of hundreds of thousands of horses to their mass slaughter, the preparation of their meat for human consumption, and the shipment of the meat products to Continental European countries, primarily France and Belgium, and to Japan. Horsemeat is a regular staple in those countries in restaurants and home cooking.

These horses are recreation and companion animals and also include thousands of racing thoroughbreds that are no longer profitable. Their slaughter operates virtually as a black market. Theft is common. Slaughterhouse agents, known as “killer-buyers”, attend auctions and seek sales from individuals. Sales are often fraudulently induced, although many sellers cannot pretend ignorance about the fates of the horses they sell. The animals are hauled for thousands of miles in crowded double-deck trucks designed for shorter necked animals, forcing them to stand in a bent position causing suffering, injury and even death. They lack adequate food, water, and rest.

More effective enforcement of federal laws could alleviate their suffering.

The Commercial Transportation of Equine for Slaughter Act (7 U.S.C. §§901-905) could eliminate the worst trucking practices. It was enacted in 1996, but the United States Department of Agriculture (USDA) only recently issued regulations to fully ban double-deck trucks (72 Fed.Reg. pp.

62798 *et seq.* (November 7, 2007)). This act also requires stops to afford the animals rest, food, and water, but USDA regulations only require 6-hour stops after a 28-hour period.

The Humane Methods of Slaughter Act of 1978 (7 U.S.C. §§1901-1906) provides that livestock, including horses, be rendered unconscious by a “means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut ...” However, the swift, strong reactions of fearful horses facing slaughter make proper methods difficult to use, especially when administered by workers who are untrained, indifferent, or under extreme stress.

### **Exports to Canada and Mexico**

However, no present federal or state law can stop the exportation of these horses to Canada and Mexico, generally estimated in recent years to be about 30,000 annually. Exports allow for exceptionally cruel treatment. Horses trucked out of the country experience even greater suffering than those transported to domestic plants. Trips are longer. Laws designed to alleviate suffering in transit, however inadequately enforced in this country, lose effect altogether once the trucks cross national borders. Conditions in foreign plants are unspeakable. Methods of slaughter lack any pretence of humane treatment. In Mexican plants, horses endure repeated stabbings in the neck that sever their spines, and they are hoisted up for skinning and slaughter paralyzed but conscious.

### **Importance of H.R.503/S.311**

Depending, as usual, on meaningful regulations and enforcement by the USDA, H.R.503/S.311 would transcend the ameliorative and limited measures of current federal law. There would be no issue of enforcement of the Commercial Transportation of Equines to Slaughter Act, because the very acquisition of these animals for slaughter for human consumption would be illegal. There would be no issue of the proper design of the trucks, or adequate rest stops, or of guarding against injury during transportation, because any form of transportation for this purpose would be illegal. There would be no issue of compliance with the Humane Methods of Slaughter Act since any method of slaughter would be illegal. The nation-wide scope of H.R.503/S.311 would assure that no plants could open up in any location in this country.

These considerations make H.R.503/S.311 simpler and more direct and effective. But the bill is more than an improvement over present legal measures. It is indispensable because it alone reaches all activities connected to slaughtering operations, such as sales and transportation, and the bill would thus bar shipments to Mexico and Canada.

### **Strategies to end horse slaughter**

While H.R.503/S.311 has been pending in Congress, two other strategies to close down the slaughter plants have been pursued by proponents and their supporting legislators: (a) the denial of funding in appropriations acts for USDA for federally-mandated inspections of horse slaughter operations intended for human consumption; and (b) the enactment and enforcement of state statutes banning horse slaughter for human consumption. These measures are important advances in the campaign to end this practice, but they also fall short of the indispensable and urgently needed comprehensive ban provided by H.R.503/S.311.

#### **(a) Federal appropriations restrictions**

Sponsors of H.R.503/S.311 have successfully sought enactment of a rider in USDA appropriations acts to deny federal funding for USDA inspections of horse slaughtering operations

under the Federal Meat Inspection Act (21 U.S.C. §§ 601 *et seq.*). Such inspections are required for marketing of the meat of a variety of domesticated animals, including horses and other equines, considered fit for human consumption. The funding prohibition was originally enacted in 2005 as part of the FY2006 Agriculture Appropriations Act.

Although Congress's purpose and intent in enacting the funding ban was unambiguous, USDA thwarted its implementation by agreeing to a proposal of the plant owners for a "fee-for-service" arrangement whereby the owners would pay for the costs of federal inspection personnel.

A lawsuit brought by the Humane Society of the United States (HSUS) to block the plan was successful in the District Court for the District of Columbia, but the government's appeal remains pending in the Court of Appeals. *HSUS, et al. v. Johanns, et al.*, Civil Action 06-256 (CKK). The basis for HSUS's action was USDA's failure to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.* That act requires the preparation of an "environmental impact statement" for "major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(C)) or, in the alternative, an "environmental assessment" for a finding of no environmental impact or one of less than significant impact. The USDA was critically handicapped in its defense by its failure to conduct any NEPA review at all, indicative of the unseemly haste with which this inspection scheme was pushed through.

The District Court enjoined the implementation of the federal funding ban pending its decision. Upon the District Court's comprehensive decision enjoining the "fee-for-service" agreement for failure to comply with NEPA, the Court of Appeals continued the stay of the funding ban pending appeal.

During the two years that it was in effect, the funding ban was never implemented. The FY2006 Agriculture Appropriations Act was superseded by the FY2008 Consolidated Appropriations Act. The FY2008 Act, which includes appropriations for USDA, renewed the measure. It was strengthened in an effort to prevent USDA from thwarting Congress's mandate again, but it is still open to evasion. How this matter will develop, particularly whether the USDA is ready to ignore Congress's clear intent for a second time, remains to be seen. If the measure could ultimately be implemented, it would be a significant accomplishment by creating a nation-wide ban. But it would be in effect only as long as the appropriations act of which it is a part is in effect. Maintaining it requires that the measure be constantly renewed.

### **(b) State bans**

The states that ban the slaughter of horses for human consumption and related acts such as sale, purchase, donation, and transportation with knowledge that a horse is destined for slaughter are Texas,<sup>1</sup> Illinois,<sup>2</sup> California,<sup>3</sup> and Oklahoma.<sup>4</sup> Similar legislation is pending in Kentucky,<sup>5</sup> New Jersey,<sup>6</sup> and New York.<sup>7</sup>

---

<sup>1</sup> Tex. Agr. Code Ann., §§149.001-007).

<sup>2</sup> Illinois Horse Meat Act, 225 ILCS 635/1 *et seq.*

<sup>3</sup> California Penal Code §598c.

<sup>4</sup> 63 Okla. St. §1-1136.

<sup>5</sup> S. B. 6.

<sup>6</sup> A.2032/S.1051.

<sup>7</sup> A.B.2572/S.B.1462.

As of 2007, there were three remaining horse slaughter plants in this country, owned by French and Belgian companies and located in Texas and Illinois. The three plants maintained a combined annual slaughter rate of about 100,000. To head off impending prosecution to enforce the anti-slaughter statutes in those two states, plant owners instituted federal court actions seeking invalidation of the state bans on grounds of federal preemption and interstate and foreign commerce.

The Texas statute was upheld in *Empacadora De Carnes De Fresnillo, S. A. De. C. V. et al. v. Curry*, 476 F. 3d 326 (5<sup>th</sup> Cir. 2007), *cert. denied* 2007 U.S. LEXIS 5933 (2007), finding that federal preemption did not apply<sup>8</sup> and that the statute did not unduly burden interstate<sup>9</sup> or foreign commerce.<sup>10</sup> The Illinois statute was upheld as constitutional on the same grounds. *Cavel International, Inc. v. Madigan, Inc.*, 500 F. 3d 551 (7<sup>th</sup> Cir. 2007).

The limited number of states that have enacted bans creates a corresponding limitation on their effectiveness. Despite the closure of the three plants in Texas and Illinois, potential owners have ample opportunity to open new plants in other states. That this is an immediate threat is demonstrated by an attempt by the South Dakota legislature to appropriate \$1 million for the construction of a horse slaughter facility. It was voted down by the State Senate's Committee on Agriculture and Natural Resources, but the bill might have been enacted had there not been widespread protests against it. *Limitations of state statutes and the appropriations funding ban*

If H.R.503/S.311 continues to languish in Congressional committees and the prohibition of funding authority expires without renewal in future appropriations acts, the campaign against horse slaughter would revert to battles in states where new plants have opened up, with the possibility that subsequently enacted state statutes will again come under judicial scrutiny. The decisions in *Empacadora* and *Cavel* would provide strong precedents. But given so many potential factual variables, the same outcome is far from a foregone conclusion. In addition, many more states would have to outlaw the practice, and it would take many years, if ever, until the campaign would yield substantial results. The successful closure of the last three plants in two states within a six-month period in 2007 was a particularly fortuitous outcome, not likely to be repeated.

### **The issue of overpopulation**

Opponents of the campaign to end the slaughtering of horses for human consumption claim that the closure of the last three plants in this country has created greater harm and suffering by depriving owners of an outlet for disposing of horses they can no longer afford to care for. Some even contend that the slaughterhouses provide a type of "humane euthanasia". The result, so the argument goes, is a sharp increase in unwanted horses and incidences of neglect.

California is the largest state that has banned the practice, and much can be learned there about the possible consequences of ending horse slaughter. A study done by the Veterinary Medical Extension of the University of California, Davis, determined that there was no increase of neglected or starved horses when California's ban was enacted in 1998. Similarly, there was no known increase in neglect or abuse in Illinois when the *Cavel* plant was destroyed by a fire in 2002 and did not reopen until 2004. On the other hand, a significant *decrease* in theft was reported in California after the enactment of its ban, as well as in Illinois during the period that the *Cavel* plant was closed.

---

<sup>8</sup> See, e.g., *California Federal Savings & Loan Assn. v. Guerra*, 479 U.S. 272, 280-281 (1987).

<sup>9</sup> See, e.g., *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

<sup>10</sup> See, e.g., *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448-49 (1979)

## **CONCLUSION**

The exports to Canada and Mexico must be stopped, or those engaged in this profitable business will regain their losses and restore the previous annual slaughter rate in this country of 100,000 or more. The conditions endured by horses in transport to these countries is cruel and inhumane, and, given the practices and conditions of slaughter plants in the neighboring countries, the suffering of these animals will only be worse. All aspects of the practice are unacceptable and are contrary to American humane policies and laws relating to these animals. The enactment of H.R.503/S.311 is therefore urgent.