

**REPORT ON LEGISLATION
BY THE ANIMAL LAW COMMITTEE**

**A.752
S.657**

**M. of A. Rosenthal
Sen. Boyle**

AN ACT to amend the agriculture and markets law, in relation to the confinement of animals for food producing purposes.

THIS BILL IS APPROVED

I. SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation¹ would amend the New York State Agriculture and Markets Law to make it unlawful to tether or confine pigs during pregnancy,² calves raised for veal,³ or egg-laying hens⁴ on a farm⁵ for all or the majority of any day in a manner that prevents those animals from lying down, standing up, fully extending their limbs, or turning around freely. The proposed legislation expressly exempts from this prohibition confinement of these animals during transportation; exhibitions at rodeos, fairs, youth programs, and similar exhibitions; the slaughtering process; scientific or agricultural research; and examination, testing, individual treatment or operation for veterinary purposes. The proposed legislation also would permit confinement of a pig during the seven-day period prior to the pig's expected date of giving birth.

¹ Full text available at <https://legislation.nysenate.gov/pdf/bills/2019/A752> (Assembly bill) and <https://legislation.nysenate.gov/pdf/bills/2019/s657> (Senate bill). The Animal Law Committee has commented on this issue on several other occasions. *See, e.g.*, Letter from Animal Law Committee to U.S. Environmental Protection Agency re: Docket ID No. EPA-HQ-OECA-2009-0274 (Jan. 30, 2015), <https://www2.nycbar.org/pdf/report/uploads/EPACAFOsAnimalReport.pdf>; Report on A.424 (April 2014), <https://www2.nycbar.org/pdf/report/uploads/20071742-CommentonConfinementforFood.pdf>; Report on H.R. 2642 (Oct. 2013), <https://www2.nycbar.org/pdf/report/uploads/20072583-ProtectInterstateCommerceActAmendmenttoHR1947.pdf>; Report on A.1656/S.4987 (May 2013), <https://www2.nycbar.org/pdf/report/uploads/20072402-Confinementforfood.pdf>. (All websites cited in this report were last visited on June 18, 2019.)

² “Pig during pregnancy” means a pregnant pig of the porcine species kept for the primary purpose of breeding.

³ “Calf raised for veal” means any calf of the bovine species kept for the purpose of producing the food product described as veal.

⁴ “Egg-laying hen” means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg production.

⁵ “Farm” means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber, and does not include live animal markets.

Violation of the law would be a Class A misdemeanor punishable by imprisonment up to one year, by a fine up to one thousand dollars, or by both. The act would take effect 24 months after becoming law.

II. JUSTIFICATION

The Animal Law Committee of the New York City Bar Association supports the proposed legislation because (i) the prohibited confinement practices are inhumane; and (ii) banning these confinement practices benefits public health and the environment.

a. The Prohibited Confinement Practices Are Inhumane

The confinement practices targeted by the proposed legislation should be prohibited because they are inhumane.

Today the vast majority of farmed animals in the United States are raised in concentrated animal feeding operations (“CAFOs”),⁶ which are characterized by the housing of large numbers of animals.⁷ Animals in CAFOs spend most of their lives in very crowded conditions, often confined to spaces barely larger than their own bodies. In particular:

- Over 6 million breeding sows (female pigs) spend their lives in “gestation crates”⁸ — individual, concrete-floored metal stalls typically measuring 2.5 feet wide by 6.5 feet long, a size so restrictive of movement that the animals are unable to turn around or take more than a step forward or backward.⁹
- Approximately 95% of egg-laying hens in the United States (about 310 million animals per year) are raised in large sheds and other indoor structures that each contain 20,000 chickens or more.¹⁰ The hens are confined to wire “battery cages” with around 67 to 86

⁶ See, e.g., American Society for the Prevention of Cruelty to Animals (ASPCA), Farm Animal Welfare, <http://www.asPCA.org/animal-cruelty/farm-animal-welfare> (noting that “[o]ver 95% of farm animals in the U.S. are raised in factory farms, which focus on profit and efficiency at the expense of animal welfare”); Sentience Institute, US Factory Farming Estimates (April 11, 2019) (estimating, using 2017 Census of Agriculture and EPA definitions of CAFOs, that 99% of U.S. farmed animals live on factory farms; see also U.S. GOV’T ACCOUNTABILITY OFFICE, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION AND A CLEARLY DEFINED STRATEGY TO PROTECT AIR AND WATER QUALITY FROM POLLUTANTS OF CONCERN, GAO-08-944 (the “GAO REPORT”) at 1 (2008), <http://www.gao.gov/new.items/d08944.pdf> (“[U]sing USDA data for large farms that raise animals as a proxy for CAFOs, it appears that the number of these operations increased by about 230 percent, going from about 3,600 in 1982 to almost 12,000 in 2002.”).

⁷ 40 C.F.R. § 122.23(b) (defining CAFO).

⁸ USDA, Quarterly Hogs and Pigs (March 28, 2019), <https://downloads.usda.library.cornell.edu/usda-esmis/files/rj430453j/k930c4962/ft848z158/hgpg0319.pdf> (estimating 6.35 million breeding hogs).

⁹ AVMA, WELFARE IMPLICATIONS OF GESTATION SOW HOUSING 1 (Nov. 11, 2015), <https://www.avma.org/KB/Resources/LiteratureReviews/Documents/WelfareImplicationsOfGestationSowHousing.pdf>.

¹⁰ UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG LAYING FLOCKS 3 (2017 ed.), <https://uepcertified.com/wp-content/uploads/2015/08/UEP-Animal-Welfare-Guidelines-20141.pdf>; ASPCA, A

square inches of usable space for each bird¹¹ — an area smaller than a sheet of 8½ by 11 inch paper.

- Over half a million veal calves are slaughtered annually in the U.S.¹² These animals are commonly removed from their mothers immediately after birth, to be raised in confined spaces that limit exercise and muscle growth in order to produce more tender meat.¹³ Traditional veal production practices include individually confining calves within narrow stalls or crates (approximately 26-30 inches wide and 66 inches long).¹⁴ While U.S. producers are increasingly utilizing group housing pens that allow animals to stand up, turn around, and engage in some social behaviors, such group housing is not legally required in most states.¹⁵

These confinement practices can cause both psychological stress and physical illness.¹⁶ For instance, battery cages make it impossible for hens to engage in natural behaviors, often leading to cannibalism and other stereotypic behavior.¹⁷ Similarly, veal crates hinder calves from engaging in even the most basic movements like standing up or turning around; this in turn leads to such physical ailments as digestive problems, discomfort, impaired locomotion, and a greater susceptibility to disease.¹⁸

The changes proposed by this bill, which allow for a gradual phase-out of these confinement methods over 24 months, would help alleviate the needless suffering of calves, sows, and hens that would otherwise be kept in these extreme, confining conditions.

Closer Look at Animals on Factory Farms, <http://www.aspc.org/animal-cruelty/farm-animal-welfare/animals-factory-farms>.

¹¹ UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG LAYING FLOCKS 19, note 10 above.

¹² U.S. DEPT. OF AGRIC., LIVESTOCK SLAUGHTER 2018 SUMMARY 6 (April 2019), <https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/8336h934w/hq37vx004/lsslan19.pdf> (noting that 580,300 calves were slaughtered in 2018).

¹³ HUMANE SOCIETY OF THE U.S. (“HSUS”), AN HSUS REPORT: THE WELFARE OF ANIMALS IN THE VEAL INDUSTRY 3, 9 (July 2012), <http://www.humanesociety.org/assets/pdfs/farm/hsus-the-welfare-of-animals-in-the-veal-industry.pdf> (the “HSUS VEAL REPORT”).

¹⁴ *Id.* at 1.

¹⁵ *See* notes 16 & 18 below.

¹⁶ *See, e.g.*, ASPCA, A Closer Look at Animals on Factory Farms, note 10 above; AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF VEAL CALF HUSBANDRY 1-3; Animal Welfare Institute, The Critical Relationship Between Farm Animal Health and Welfare (2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Animal-Health-Welfare-Report-04022018.pdf>.

¹⁷ ASPCA, A Closer Look at Animals on Factory Farms, note 10 above.

¹⁸ AMERICAN VETERINARY MEDICAL ASSOCIATION (“AVMA”), LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF VEAL CALF HUSBANDRY 2-3 (Oct. 13, 2008), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/veal_calf_husbandry_bgnd.pdf; HSUS VEAL REPORT 8-12, note 13 above.

b. Phasing out the Prohibited Confinement Practices Benefits Public Health and the Environment

Phasing out these intensive confinement practices would protect the public health and environment of New Yorkers, as these practices are a major source of antibiotic-resistant bacteria as well as air and water pollution.

i. The link between intensive confinement and antibiotic-resistant bacteria

The connection between animal health and animal welfare is well-documented.¹⁹ Intensive confinement practices for food-producing animals — like the gestation crates, veal crates, and battery cages targeted by the proposed legislation — often drive farmers to use non-therapeutic antibiotics to manage and prevent the diseases induced by such practices.²⁰ Indeed, up to an estimated 70% of all antibiotics sold in the United States are given to healthy food animals.²¹ This use of antibiotics in animal agriculture has been widely recognized as a primary cause of the proliferation of antibiotic-resistant bacteria. For example, the Centers for Disease Control and the Food and Drug Administration have identified the widespread use of antibiotics in food-producing animals as a significant factor in the emergence and transmission of antibiotic-resistant bacteria to humans.²² And in light of these risks, public health organizations have called for phasing out intensive confinement practices, including the use of gestation crates, veal crates and battery cages.²³

¹⁹ See generally Animal Welfare Institute, *The Critical Relationship Between Farm Animal Health and Welfare* (2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Animal-Health-Welfare-Report-04022018.pdf>.

²⁰ PEW COMM'N ON INDUSTRIAL FARM ANIMAL PRODUCTION, *PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA* 58 (2008) (the “PEW REPORT”), <http://www.pewtrusts.org/~media/legacy/uploadedfiles/peg/publications/report/pcifapfinalpdf.pdf> (“Industrial farm animal production systems are also highly dependent on intensive animal confinement, which commonly requires the use of antimicrobials to prevent disease, not just to treat it.”).

²¹ PEW REPORT, note 20 above, at 15 (citing Margaret Mellon et al., *Hogging It: Estimates of Antimicrobial Abuse in Livestock* (Jan. 2001)).

²² U.S. DEPT. OF HEALTH & HUMAN SVCS., CENTERS FOR DISEASE CONTROL & PREVENTION, *ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES* 37 (Apr. 23, 2013), <http://www.cdc.gov/drugresistance/threat-report-2013/pdf/ar-threats-2013-508.pdf> (noting “the link between antibiotic use in food-producing animals and the occurrence of antibiotic-resistant infections in humans”); U.S. DEPT. OF HEALTH & HUMAN SVCS., FOOD & DRUG ADMN., CTR FOR VETERINARY MEDICINE, *GUIDANCE FOR INDUSTRY, THE JUDICIOUS USE OF MEDICALLY IMPORTANT ANTIMICROBIAL DRUGS IN FOOD-PRODUCING ANIMALS* 3 (April 13, 2012), <https://www.fda.gov/media/79140/download>.

²³ PEW REPORT, note 20 above, at 85 (recommending that the industry “[i]mplement better animal husbandry practices to improve public health and animal well-being” and “[p]hase out the most intensive and inhumane production practices”); JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, *FOOD ANIMAL PRODUCTION IN AMERICA: EXAMINING THE IMPACT OF THE PEW COMMISSION’S PRIORITY RECOMMENDATIONS* 25-26 (Fall 2013) (the “JHC REPORT”), http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/pdf/research/clf_reports/CLF-PEW-for%20Web.pdf (recommending a “phase out [of] intensive confinement” and noting that “[i]n light of these conditions for animals, and the connections between animal welfare, food safety, and the public, the Commission recommended that all intensive confinement systems that restrict the natural movement and normal behaviors of animals, including swine gestation crates, battery cages for laying hens, and tethered veal crates, be phased out within 10 years”); see also Scott Weathers, Sophie Hermanns and Mark Bittman, *Health Leaders Must Focus on the Threats from Factory Farms*, N.Y. TIMES (May 21, 2017),

ii. The link between intensive confinement and air and water pollution

Intensive confinement of farmed animals also raises serious environmental concerns. CAFOs produce immense amounts of untreated waste that must be stored and properly disposed.²⁴ Manure production at a single CAFO can range from an estimated 2,800 to 1.6 million tons a year²⁵ — quantities of waste and manure that often greatly exceed that which can biodegrade or be absorbed by the land.²⁶ Moreover, this waste contains many different types of pollutants, including heavy metals, hormones and antibiotics; nutrients like nitrogen and phosphorus; gases such as nitrous oxide, methane and carbon dioxide; and pathogens such as *E. Coli*.²⁷ CAFO emissions also contribute significantly to water pollution,²⁸ air pollution, and global warming.²⁹

III. SUPPORT AND OPPOSITION RELATED TO THE PROPOSED LEGISLATION

While federal law does not mandate welfare standards for the treatment of farmed animals prior to transport and slaughter,³⁰ at least twelve states — Florida,³¹ Arizona,³² Oregon,³³ Colorado,³⁴ California,³⁵ Maine³⁶, Massachusetts,³⁷ Michigan,³⁸ Ohio,³⁹ Rhode Island,⁴⁰

<https://www.nytimes.com/2017/05/21/opinion/who-factory-farming-meat-industry-.html> (noting that, aside from the concern that mass-produced inexpensive meat and dairy are “probably carcinogenic,” “a potentially greater problem is superbugs, the antibiotic-resistant bacteria that proliferate among confined animals in factory farms”).

²⁴ PEW REPORT, note 20 above, at 18 (“The USDA estimates that more than 335 million dry tons of manure are produced yearly in the United States.”) (citing U.S. DEPT. OF AGRIC., FY-2005 Annual Report Manure and Byproduct Utilization National Program, at 1, <https://www.ars.usda.gov/ARSUserFiles/np206/NP206FY2005AnnualReport.pdf>).

²⁵ GAO REPORT, note 6 above, at 5.

²⁶ U.S. DEPT. OF AGRIC., Report to Congress on Manure Use for Fertilizer and for Energy, at 40 (June 2009), https://www.ers.usda.gov/webdocs/publications/42731/9428_ap037_1_.pdf?v=0.

²⁷ See JHC REPORT, note 23 above, at 18, 24; FOOD & AGRIC. ORG. OF THE UNITED NATIONS, LIVESTOCK’S LONG SHADOW 5, 68-70 (2006), <http://www.fao.org/3/a-a0701e.pdf>.

²⁸ CAFOs are defined as “point sources” of pollutants under the Clean Water Act (see 33 U.S.C. §§ 1342, 1362(14)) and, along with other Animal Feeding Operations, have been deemed “probable sources” responsible for polluting over 22,000 miles of river and streams and 124,000 acres of lakes, reservoirs and ponds in the US. ENVIRONMENTAL PROTECTION AGENCY, SPECIFIC STATE PROBABLE SOURCES THAT MAKE UP THE NATIONAL AGRICULTURE PROBABLE SOURCE GROUP, http://iaspub.epa.gov/tmdl_waters10/attains_nation_cv.source_detail?p_source_group_name=AGRICULTURE.

²⁹ JHC REPORT, note 23 above, at 18; FOOD & AGRIC. ORG. OF THE UNITED NATIONS, LIVESTOCK’S LONG SHADOW 79-114 (2006), <http://www.fao.org/3/a-a0701e.pdf>.

³⁰ See generally Animal Welfare Institute, Legal Protections for Animals on Farms (Oct. 2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-LegalProtections-AnimalsonFarms-110714.pdf>.

³¹ FLA. CONST., ART. X, § 21 (“It shall be unlawful for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely”). A regularly updated list of state legislation addressing confinement practices can be found at ASPCA, Farm Animal Confinement Bans by State, <https://www.aspc.org/animal-protection/public-policy/farm-animal-confinement-bans>.

³² ARIZ. REV. STAT. § 13-2910.07 (Cruel and inhumane confinement of a pig during pregnancy or of a calf raised for veal).

³³ OR. REV. STAT. § 600.150 (Prohibition against restrictive confinement).

Kentucky,⁴¹ and Washington⁴² — have banned intensive confinement practices similar to some or all of those proposed in this bill. The European Union has also banned similar practices.⁴³

Non-governmental groups have also weighed in on similar legislation. For instance, the American Veal Association supports eliminating veal crates and in fact passed a resolution calling for all U.S. veal producers to transition to group housing methods by December 31, 2017.⁴⁴ That goal was met by the Association’s member organizations.⁴⁵ The phasing out of intensive confinement practices is also supported by a number of animal welfare organizations, including the Humane Society of the United States (“HSUS”)⁴⁶ and the American Society for the Prevention of Cruelty to Animals (“ASPCA”).⁴⁷

³⁴ COLO. REV. STAT. §§ 35-50.5-101 – 103 (Confinement of Calves Raised for Veal and Pregnant Sows).

³⁵ CAL. HEALTH & SAFETY CODE §§ 25990-25994 (imposing various restrictions on how egg-laying hens, breeding pigs, and calves are housed); CAL. HEALTH & SAFETY CODE §§ 25995-25997.1 (banning in-state sale of eggs from hens housed in battery cages).

³⁶ 7 M.R.S.A. § 4020 (Cruel confinement of calves raised for veal and sows during gestation).

³⁷ Massachusetts Minimum Size Requirements for Farm Animal Containment, Question 3 (phasing out various confinement methods), available at http://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf.

³⁸ M.C.L. 287.746 (prohibiting confinement that prevents a farmed animal from lying down, standing up, fully extending its limbs, or turning around freely).

³⁹ OHIO ADM. CODE 901:12 (prohibiting various confinement practices for veal calves, chickens, and pigs).

⁴⁰ 4 R.I. GEN. LAWS §§ 4-1.1 – 4.1.6 (“Unlawful Confinement of a Covered Animal”).

⁴¹ 302 KAR 21:030, § 2 (requiring pens that “allow socialization between veal calves, and allow the calves to stand without impediment, rest in normal postures, groom, and eat”).

⁴² WASH. REV. CODE § 69-25-065 (phasing out battery cages); WASH. REV. CODE § 69.25.065 (banning in-state sale of products from battery cage systems).

⁴³ European Union, Commission Decision of 24 February 1997 Amending the Annex to Directive 91/629/EEC Laying Down Minimum Standards for the Protection of Calves, art. 1(3) (prohibiting tethering of individually-housed calves), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997D0182&from=EN>; European Union, Council Directive 91/630/EEC of 19 November 1991 Laying Down Minimum Standards for the Protection of Pigs, art. 3(2) (prohibiting installations in which sows or gilts are tethered), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991L0630&from=en>; European Union, Council Directive 1999/74/EC of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, art. 6 (requiring at least 750 cm² of cage area per hen, 600 cm² of which shall be usable), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0074&from=EN>.

⁴⁴ Resolution of the Board of Directors of the American Veal Association (May 9, 2007), http://www.americanveal.com/s/GRP_HOUSING_RESOL1-0507.pdf.

⁴⁵ American Veal Association, AVA Confirms “Mission Accomplished” (Jan. 8, 2018), <https://tinyurl.com/yxurbnb3>. Group housing means housing veal calves in groups of two or more. Photos of this housing are available at <http://www.americanveal.com/animal-care-housing>.

⁴⁶ HSUS, Improving the Lives of Farm Animals, https://www.humanesociety.org/all-our-fights/protect-farm-animals?credit=blog_post_050719_id10579; see also HSUS, An HSUS Report: The Welfare of Intensively Confined Animals in Battery Cages, Gestation Crates, and Veal Crates (July 2012), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-animal-welfare-of-intensively-confined-animals.pdf>.

⁴⁷ Joshua Miller, *Egg Industry to Fight Ballot Initiative*, BOSTON GLOBE (Sept. 30, 2015), <https://www.bostonglobe.com/metro/2015/08/19/ballot-push-would-mandate-cage-free->

Similar legislation has been opposed, however, by agricultural groups like the National Pork Producers Council, which has claimed that the legislation would financially harm hog farmers.⁴⁸ Other industry groups have claimed that such legislation would raise grocery bills, thereby burdening low-income families.⁴⁹ For instance, United Egg Producers has opposed similar legislation on the grounds that egg prices would increase (a claim challenged by the Humane Society of the United States).⁵⁰

IV. CONCLUSION

For the reasons above, the Animal Law Committee of the New York City Bar Association supports the proposed legislation.

Animal Law Committee
Christopher Wlach, Chair

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[eggs/IW2C2aPBiYH6xZi1jqePtL/story.html](https://www.aspc.org/about-us/press-releases/aspc-a-supports-prevention-farm-animal-cruelty-act); ASPCA, ASPCA Supports Prevention of Farm Animal Cruelty Act (Feb. 22, 2011), <https://www.aspc.org/about-us/press-releases/aspc-a-supports-prevention-farm-animal-cruelty-act>.

⁴⁸ Joshua Miller, *Egg Industry to Fight Ballot Initiative*, BOSTON GLOBE (Sept. 30, 2015), note 47 above. Other organizations, however, have posited that reducing the concentration of animals could help smaller farms compete against large corporations. Editorial Board, *Standing, Stretching, and Turning Around*, N.Y. TIMES (Oct. 8, 2008), <https://www.nytimes.com/2008/10/09/opinion/09thu3.html>.

⁴⁹ Spencer Buell, *Massachusetts Passes Question 3, Banning Small Cages for Farm Animals*, BOSTON MAGAZINE (Nov. 8, 2016), <http://www.bostonmagazine.com/news/blog/2016/11/08/mass-question-3-farm-animals>.

⁵⁰ Joshua Miller, *Egg Industry to Fight Ballot Initiative*, BOSTON GLOBE (Sept. 30, 2015), note 47 above.