



NEW YORK
CITY BAR

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

A.3630

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AN ACT to amend the agriculture and markets law, in relation to providing for cage-free egg production.

THIS BILL IS SUPPORTED

I. SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation¹ would amend the New York State Agriculture and Markets Law to require that a commercial farm² owner or operator that produces shell eggs³ or liquid eggs⁴ for human consumption confine egg-laying hens⁵ in a cage free housing system.⁶ The proposed

¹ Full text available at https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03630&term=&Summary=Y&Memo=Y&Text=Y. The Animal Law Committee has commented on the confinement of farmed animals on several other occasions. *See, e.g.*, Report on A. 752/ S. 657 (June 2019), https://s3.amazonaws.com/documents.nycbar.org/files/20071742-Confinement_Animals_Food.pdf; 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>. (All websites cited in this report were last visited on March 25, 2021).

² “Commercial 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.

³ “Shell-egg” means a whole egg of an egg-laying hen in its shell form that is intended for human consumption.

⁴ “Liquid egg” means an egg of an egg-laying hen broken from the shells that is intended for human consumption.

⁵ “Egg-laying hen” means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg production.

⁶ “Cage-free housing system” means an indoor or outdoor controlled environment for an egg-laying hen within which: (I) an egg-laying hen is free to roam unrestricted except by exterior walls; (II) an egg-laying hen is provided with, at a minimum, the amount of usable floor space per hen required by the 2017 edition of the United Egg Producers’ Animal Husbandry guidelines for United States egg-laying flocks: guidelines for cage-free production, or subsequent version of such guidelines recognized by the N.Y.S. Department of Agriculture and Markets in a rule or regulation which provides equal or more usable floor space per egg-laying hen; (III) an egg-laying hen is provided enrichments that allow a hen to exhibit natural behaviors, including, at a minimum, a scratch area, a perch, a nest

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

legislation would also require that all eggs sold in New York State come from cage-free and free-range environments.

Violation of the law would be punishable by a civil penalty of up to five thousand dollars for the first violation and up to twenty-five thousand dollars for any subsequent violation. The law would take effect 24 months after enactment.

II. JUSTIFICATION

The Animal Law Committee of the New York City Bar Association supports the proposed legislation because caging egg-laying hens is inhumane and banning this confinement practice benefits public health and the environment. Further, by passing the proposed legislation, New York State would join a growing number of jurisdictions that have prohibited these inhumane and harmful practices.

A. Caging egg-laying hens is inhumane.

Caging egg-laying hens should be prohibited because it is inhumane. As background, the vast majority of farmed animals in the United States are raised in concentrated animal feeding operations (“CAFOs”),⁷ which are characterized by the housing of large numbers of animals.⁸ Animals in CAFOs spend most of their lives in very crowded conditions, often confined to spaces barely larger than their own bodies.

Egg-laying hens in particular suffer from intensive confinement. Approximately 95% of hens in the United States (about 310 million hens per year) are raised in large sheds and other indoor structures that on average contain around 40,000 chickens.⁹ The hens are confined to wire “battery cages” with around 67 to 86 square inches of usable space for each bird¹⁰ — an area

box, and a dust bathing area; (IV) a farm employee can provide care while standing somewhere within a hen’s usable floor space; and (V) each egg-laying hen is provided unlimited access to the outdoors in a safe and secure environment that prevents predators.

⁷ See, e.g., American Society for the Prevention of Cruelty to Animals (ASPCA), *Animals on Factory Farms*, <https://www.aspc.org/animal-cruelty/farm-animal-welfare/animals-factory-farms> (noting that “95% of farm animals in the U.S. are raised in factory farms”); Sentience Institute, *US Factory Farming Estimates* (Apr. 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), <https://www.gao.gov/assets/gao-08-944.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.”).

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

⁹ United Egg Producers, *Guidelines for Cage Housing: Animal Husbandry Guidelines for U.S. Egg-Laying Flocks 3* (2017 ed.), https://uepcertified.com/wp-content/uploads/2020/02/Caged-UEP-Guidelines_17.pdf; ASPCA, *Growing Problem: Selective Breeding in the Chicken Industry: The Case for Slower Growth 10* (2015), https://www.aspc.org/sites/default/files/chix_white_paper_nov2015_lores.pdf.

¹⁰ United Egg Producers, *Animal Husbandry Guidelines for U.S. Egg Laying Flocks 19*, note 9 above.

smaller than a sheet of 8½ by 11 inch paper. New York is no exception, as it both contains farms with caged hens and also provides a major point of sale for non-cage-free eggs.¹¹

These confinement practices cause psychological stress and physical illness.¹² The close quarters of the battery cages make it impossible for hens to engage in natural behaviors, often leading to cannibalism and other stereotypic behavior.¹³ And the unchanging and barren environment wreaks psychological damage on the birds, leading to apathy, frustration, and boredom.¹⁴ The following statements from animal welfare scientists and experts further illustrate the physical and mental harm faced by birds in battery cages:¹⁵

- “The lack of space in battery cages reduces welfare by preventing hens from adopting certain postures — such as an erect posture with the head raised — and performing particular behaviors — such as wing-flapping.”¹⁶
- “The worst torture to which a battery hen is exposed is the inability to retire somewhere for the laying act. For the person who knows something about animals it is truly heart-rending to watch how a chicken tries again and again to crawl beneath her fellow-cage mates to search there in vain for cover.”¹⁷
- “Anyone who has studied the social life of birds carefully will know that theirs is a subtle and complex world, where food and water are only a small part of their behavioural needs. The brain of each bird is programmed with a complicated set of drives and responses that set it on the path to a life full of special territorial, nesting, roosting, grooming, parental, aggressive and sexual activities in addition to the simple feeding behaviour. All these are denied the battery hens.”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 hens that would otherwise be kept in these extreme, confining conditions.

¹¹ Joe Mahoney, *Push to Ban Eggs from Caged Hens Comes to New York*, Lockport Union-Sun and Journal (Oct. 10, 2020), https://www.lockportjournal.com/news/local_news/push-to-ban-eggs-from-caged-hens-comes-to-new-york/article_201c3b02-bc39-5dec-9647-7efc9d68bad4.html.

¹² See, e.g., ASPCA, *Animals on Factory Farms*, note 7 above; 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>; The Humane Society of the United States (“HSUS”), *The Welfare of Animals in the Egg Industry* (2008), https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1016&context=hsus_reps_impacts_on_animals.

¹³ HSUS, *The Welfare of Animals in the Egg Industry* 6, note 12 above (citing scientific studies).

¹⁴ *Id.* at 4 (citing scientific studies).

¹⁵ These quotations are sourced from HSUS, *Scientists and Experts on Battery Cages and Laying Hen Welfare*, <https://www.humanesociety.org/sites/default/files/docs/hsus-expert-synopsis-battery-cages-hen-welfare.pdf>.

¹⁶ *Id.* (citing Ian Duncan, *Thirty Years of Progress in Animal Welfare Science*, 1 J. of Appl. Anim. Welf. Sci. 151-54 (1998)).

¹⁷ *Id.* (citing Konrad Lorenz, *Animals Are Sentient Beings: Konrad Lorenz on Instinct and Modern Factory Farming*, *Der Spiegel*, at 264 (Nov. 17, 1980)).

¹⁸ *Id.* (citing Clare Druce & Philip Lymbery, *Outlawed in Europe: How America Is Falling Behind Europe in Farm Animal Welfare* 20 (2002)).

B. Phasing out the prohibited confinement practice benefits public health and the environment.

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

1. 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 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 In light of these risks, public health organizations have called for phasing out intensive confinement practices like battery cages.²³

¹⁹ Animal Welfare Institute, *The Critical Relationship Between Farm Animal Health and Welfare* 15-17, note 12 above.

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/pcfifapfinalpdf.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 *Id.* 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*, 2019, at 5 (Dec. 2019), <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf> ("Antibiotics save lives, but any time antibiotics are used — in people, animals, or crops — they can cause side effects and can contribute to the development of antibiotic resistance."); 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 (Apr. 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"), <https://clf.jhsph.edu/sites/default/files/2019-05/industrial-food-animal-production-in-america.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), <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

Intensive animal confinement in food systems is also linked to pandemics.²⁴ Although the current COVID-19 pandemic is presumed to have originated from consumption of wild animals,²⁵ other recent pandemic threats — such as avian flu²⁶ and swine flu²⁷ — came from farmed animals.

2. 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.²⁸ Manure production at a single CAFO can range from an estimated 2,800 to 1.6 million tons a year²⁹ — quantities of waste and manure that often greatly exceed that which can biodegrade or be absorbed by the land.³⁰ 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*.³¹ CAFO emissions also contribute significantly to water pollution,³² air pollution, and global warming.³³

carcinogenic,” “a potentially greater problem is superbugs, the antibiotic-resistant bacteria that proliferate among confined animals in factory farms”).

²⁴ New York City Bar Association Animal Law Committee, Zoonotic Transfer of Disease in a Post-COVID-19 Era: In Our Backyards and in Our Future (Jun. 26, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020705-ZoonoticDiseaseCOVID19.pdf>.

²⁵ Centers for Disease Control and Prevention (CDC), COVID-19 and Animals (Feb. 10, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html>.

²⁶ CDC, Highly Pathogenic Asian Avian Influenza A(H5N1) Virus (Dec. 12, 2018), <https://www.cdc.gov/flu/avianflu/h5n1-virus.htm>.

²⁷ CDC, Origin of 2009 H1N1 Flu (Swine Flu): Questions and Answers (Nov. 25, 2009), https://www.cdc.gov/h1n1flu/information_h1n1_virus_qa.htm.

²⁸ 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>).

²⁹ GAO Report note 7 above, at 5.

³⁰ 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.

³¹ 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>.

³² 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 rivers and streams and 124,000 acres of lakes, reservoirs and ponds in the US. Environmental Protection Agency. EPA, Specific State Probable Sources that Make Up the National Agriculture Probable Source Group, http://iaspub.epa.gov/tmdl_waters10/attains_nation_cy.source_detail?p_source_group_name=AGRICULTURE.

³³ JHC Report, note 23 above, at 18; Food & Agric. Org. of the United Nations, Livestock’s Long Shadow, note 31 above.

C. By passing the proposed legislation, New York State would join a growing number of jurisdictions that have prohibited inhumane and harmful confinement practices.

While federal law does not mandate welfare standards for the treatment of farmed animals prior to transport and slaughter,³⁴ at least twelve states — Florida,³⁵ Arizona,³⁶ Oregon,³⁷ Colorado,³⁸ California,³⁹ Maine⁴⁰, Massachusetts,⁴¹ Michigan,⁴² Ohio,⁴³ Rhode Island,⁴⁴ Kentucky,⁴⁵ and Washington⁴⁶ — have banned similar intensive confinement practices of various types of farmed animals, including calves, pigs, and hens. The European Union has also banned similar practices.⁴⁷

³⁴ 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>.

³⁵ 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.asPCA.org/animal-protection/public-policy/farm-animal-confinement-bans>.

³⁶ Ariz. Rev. Stat. § 13-2910.07 (Cruel and inhumane confinement of a pig during pregnancy or of a calf raised for veal).

³⁷ Or. Rev. Stat. § 600.150 (Prohibition against restrictive confinement).

³⁸ Colo. Rev. Stat. §§ 35-50.5-101 – 103 (Confinement of Calves Raised for Veal and Pregnant Sows).

³⁹ 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).

⁴⁰ M.R.S.A. § 4020 (Cruel confinement of calves raised for veal and sows during gestation).

⁴¹ 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.

⁴² 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).

⁴³ Ohio Adm. Code 901:12 (prohibiting various confinement practices for veal calves, chickens, and pigs).

⁴⁴ 4 R.I. Gen. Laws §§ 4-1.1 – 4.1.6 (“Unlawful Confinement of a Covered Animal”).

⁴⁵ 302 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”).

⁴⁶ 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).

⁴⁷ 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>.

Phasing out intensive confinement practices is also supported by a number of animal welfare organizations, including the Humane Society of the United States⁴⁸ and the American Society for the Prevention of Cruelty to Animals (ASPCA).⁴⁹

Similar legislation has been opposed, however, by agricultural groups that claim the legislation would financially harm farmers.⁵⁰ Other industry groups have claimed that such legislation would raise grocery bills, thereby burdening low-income families.⁵¹ For instance, United Egg Producers has opposed a similar bill on the grounds that egg prices would increase.⁵²

We, however, submit that the arguments in favor of this legislation as outlined in this report substantially outweigh the arguments in opposition. Moreover, while anti-confinement legislation may financially impact certain farms, reducing the concentration of animals might ultimately help smaller farms compete against large corporations.⁵³

III. CONCLUSION

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

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⁴⁸ 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 (Jul. 2012), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-animal-welfare-of-intensively-confined-animals.pdf>.

⁴⁹ 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-eggs/IW2C2aPBiYH6xZi1jqePtL/story.html>; ASPCA, ASPCA Supports Prevention of Farm Animal Cruelty Act (Feb. 22, 2011), <https://www.asPCA.org/about-us/press-releases/aspca-supports-prevention-farm-animal-cruelty-act>.

⁵⁰ Joshua Miller, *Egg Industry to Fight Ballot Initiative*, Boston Globe, note 49 above.

⁵¹ 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>.

⁵² Joshua Miller, *Egg Industry to Fight Ballot Initiative*, Boston Globe, note 49 above.

⁵³ Editorial Board, *Standing, Stretching, and Turning Around*, N.Y. Times (Oct. 8, 2008), <https://www.nytimes.com/2008/10/09/opinion/09thu3.html>.