
THE OHIO LIVESTOCK CARE STANDARDS AS A BLUEPRINT FOR LIVESTOCK WELFARE POLICY

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I. INTRODUCTION

Animal welfare legislation concerning the care and treatment of livestock has been a hot button issue in the United States in recent years. The fierce battle over animal welfare between agricultural interests and animal welfare groups has been fought mostly at the state level, including in Ohio.¹ In 2009, Ohio voters overwhelmingly passed the Ohio Livestock Care Standards amendment to the State Constitution.²

Ohio's constitutional amendment called for a Livestock Care Standards Board made up of farmers, veterinarians, university administrators, animal welfare representatives, food safety experts, and members of the general public.³ This Board was charged with the task of creating livestock care standards, which

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1. See, e.g., Elizabeth R. Springsteen, *A Proposal to Regulate Farm Animal Confinement in the United States and an Overview of Current and Proposed Laws on the Subject*, 14 *DRAKE J. AGRIC. L.* 437, 455 (2009); see also Lindsay Vick, Comment, *Confined to a Process: The Preemptive Strike of Livestock Care Standards Boards in Farm Animal Welfare Regulation*, 18 *ANIMAL L.* 151 (2011) (discussing laws passed at the state level dealing with farm animal welfare).

2. *State Issue 2: November 3, 2009, Official Results*, OHIO SEC'Y OF STATE, <http://www.sos.state.oh.us/sos/elections/research/electResultsMain/2009ElectionResults/20091103issue2.aspx> (last visited April 9, 2014).

3. OHIO REV. CODE ANN. § 904.02 (West 2013).

would become state law.⁴ By the summer of 2011, representatives from the agriculture industry and animal welfare groups alike were voicing their praise for the new standards.⁵ The standards apply to “the care of dairy, beef, swine, turkeys, broilers, sheep, goats, alpacas, llamas, and equine[s],”⁶ and include euthanasia, feed and water, management, and transportation standards for each species, as well as penalties for violating the standards.⁷

This Note provides an analysis of the Ohio Livestock Care Standards, and discusses why the standards could be used as an effective blueprint for livestock welfare laws in other states, and perhaps even for a federal livestock care law. Part II will include a discussion about how and why the Livestock Care Standards came about in Ohio. Part III will outline the law—the make-up of the board, the penalties associated with violating the standards, and the actual standards themselves. Part IV will provide a discussion of whether the standards have been “successful” from a variety of points of view. Part V will examine other states’ and the federal government’s take on the issue of livestock welfare in comparison to Ohio. Part VI will advocate for the Ohio Livestock Care Standards Board to be used as a model for other states and the federal government. Finally, Part VII will provide a conclusion and a recommendation that other states and the federal government should use the Ohio Livestock Care Standards as an instructive example of both substantive law and the law-making process.

II. BACKGROUND: WHY OHIO CREATED LIVESTOCK CARE STANDARDS

In 2009, the Humane Society of the United States (HSUS) was looking to move into the state of Ohio and put its own animal care issue on the ballot for voters in the state to accept or reject.⁸ HSUS, which had previously spent ten million dollars to pass livestock welfare laws in California, was looking toward Ohio to launch “its next comprehensive action on a range of issues from livestock confinement to puppy mills.”⁹ The Farm Bureau and others involved in

4. *Id.* § 904.03.

5. See Alan Johnson, *All Sides Hail New Livestock-Care Rules*, COLUMBUS DISPATCH, Aug. 29, 2011, <http://www.dispatch.com/content/stories/local/2011/08/29/all-sides-hail-new-livestock-care-rules.html>.

6. *Ohio Livestock Care Standards*, OHIO DEP’T OF AGRIC., <http://www.agri.ohio.gov/LivestockCareStandards/> (last visited April 9, 2014).

7. OHIO ADMIN. CODE 901:12-1-01 to 901:12-15-04 (2013).

8. *HSUS Backs New Livestock Reform Initiative in Ohio*, DVM360 (Feb. 1, 2010), <http://veterinarynews.dvm360.com/dvm/Veterinary+news/Ohio-livestock-housing-back-to-voters/ArticleStandard/Article/detail/654615>.

9. Terry Kinney, *Ohio Governor Backs Plan for Livestock Standards*, AKRON BEACON J. ONLINE, June 23, 2009, <http://www.ohio.com/news/governor-backs-plan-for-livestock-standards-1.126640>.

Ohio agriculture did not “want debate on the issue [of livestock animal welfare] to be driven by one point of view”—namely HSUS’s point of view.¹⁰ As a result, the Ohio Farm Bureau, other farm trade groups, and former governor Ted Strickland made an agreement with HSUS: the State of Ohio would create its own livestock care standards, and the HSUS would abandon its ballot initiative.¹¹

The Ohio Livestock Care Standards were placed on the ballot as Issue 2—a proposed amendment to the Ohio Constitution.¹² The amendment “arose through a joint resolution” in the state’s legislature—it was approved by both houses of the General Assembly, and then by the Ballot Board and the Secretary of State.¹³ Specifically, the constitutional amendment called for the creation of “an Ohio Livestock Care Standards Board that would have the authority to establish standards for livestock care in Ohio.”¹⁴ These standards would be “oversee[n] and enforce[d]” by the Ohio Department of Agriculture and the Ohio General Assembly.¹⁵ In addition, the amendment gave the General Assembly “the authority to enact laws necessary for creating the Livestock Care Standards Board.”¹⁶

On November 3, 2009, Ohio voters approved of the constitutional amendment—in fact, it received almost sixty-four percent of the vote.¹⁷ This constitutional amendment does not prevent Ohioans from introducing “new statutory laws through the ballot initiative process” that might impose animal welfare laws like the ones backed by HSUS in other states.¹⁸ Despite this possibility, the Ohio Livestock Care Standards are somewhat protected from future proposals because they were passed as a constitutional amendment—so any future ballot proposal would have to fall under the language of the amendment in order to be valid under the Ohio Constitution.¹⁹ In this way, Ohio legislators, agricultural groups, and voters have successfully preempted attempts by outsiders to impose animal welfare laws on Ohio farmers, while still including other points of view.

10. *Id.*

11. Johnson, *supra* note 5.

12. Peggy Hall, *Understanding Ohio’s Issue 2*, OHIO AGRIC. L. BLOG (Oct. 27, 2009, 9:08 PM), <http://ohioaglaw.wordpress.com/2009/10/27/understanding-ohios-issue-2/>.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *State Issue 2: November 3, 2009, Official Results*, *supra* note 2.

18. Hall, *supra* note 12.

19. *Id.*

III. THE OHIO LIVESTOCK CARE STANDARDS

The previous section discussed that part of the incentive for Ohio to pass the Livestock Care Standards amendment was to prevent animal rights groups such as HSUS from coming into the state and imposing their rules on farmers through a ballot initiative. While the amendment does look out for Ohio livestock producers by including farmers and other agriculturalists on the Livestock Care Standards Board, it also includes members and standards from the very groups it sought to preempt.²⁰ In this way, the amendment protects the interests of Ohio livestock producers while still remaining open for compromise.²¹

There are several component parts to what is known collectively as the Ohio Livestock Care Standards. First, there is the Livestock Care Standards Board, whose make-up and responsibilities are laid out in the Ohio Revised Code (ORC) section 904.02.²² Section 904.03 of the ORC discusses what the Livestock Care Standards Board must consider when adopting care standards and rules.²³ The actual standards for livestock care and definitions adopted by the Livestock Care Standards Board can be found in the Ohio Administrative Code (OAC) chapter 901:12.²⁴

Section 904.02 of the Ohio Revised Code describes the members of the Ohio Livestock Care Standards Board—it reads:

- (A) There is hereby created the Ohio livestock care standards board consisting of the following members:
- (1) The director of agriculture, who shall be the chairperson of the board;
 - (2) Ten members appointed by the governor with the advice and consent of the senate. The ten members shall be residents of this state and shall include the following:
 - (a) One member representing family farms;
 - (b) One member who is knowledgeable about food safety in this state;
 - (c) Two members representing statewide organizations that represent farmers;
 - (d) One member who is a veterinarian licensed under Chapter 4747[] of the Revised Code;

20. OHIO REV. CODE ANN. § 904.02 (West 2013).

21. See Johnson, *supra* note 5.

22. OHIO REV. CODE ANN. § 904.02.

23. *Id.* § 904.03.

24. OHIO ADMIN. CODE 901:12-1-01 to 901:12-15-04 (2013).

- (e) The state veterinarian in the department of agriculture;
 - (f) The dean of the agriculture department of a college or university located in this state;
 - (g) Two members of the public representing consumers in this state;
 - (h) One member representing a county humane society organized under Chapter 1717[] of the Revised Code.
- (3) One member appointed by the speaker of the house of representatives who shall be a family farmer;
- (4) One member appointed by the president of the senate who shall be a family farmer.

Not more than seven members appointed to the board at any given time shall be of the same political party.²⁵

Section 904.03 of the Ohio Revised Code describes the factors the Livestock Care Standards Board must take into consideration when adopting the livestock care rules. These factors include:

- (1) Best management practices for the care and well-being of livestock;
- (2) Biosecurity;
- (3) The prevention of disease;
- (4) Animal morbidity and mortality data;
- (5) Food safety practices;
- (6) The protection of local, affordable food supplies for consumers;
- (7) Generally accepted veterinary medical practices, livestock practice standards, and ethical standards established by the American veterinary medical association;
- (8) Any other factors that the board considers necessary for the proper care and well-being of livestock in this state.²⁶

After the constitutional amendment for the Livestock Care Standards passed and members were chosen for the Board, the Board then had the responsibility of developing the actual standards.²⁷ The standards were developed by the Board through “more than 20 meetings, 55 separate subcommittee meetings, 7

25. OHIO REV. CODE ANN. § 904.02.

26. *Id.* § 904.03.

27. *See* Hall, *supra* note 12.

listening sessions[,] and 2 full days of touring a variety of livestock farms across Ohio.”²⁸ Thus far, the Board has come up with “[r]ules affecting the care of dairy, beef, swine, turkeys, broilers, sheep, goats, alpacas, llamas, and equine[s].”²⁹ Standards affecting these species were “approved by the Ohio General Assembly’s Joint Committee on Agency Rule Review and [went] into effect September 29, 2011.”³⁰

The Animal Care Standards lay out guidelines for each species and the penalties for violating these guidelines.³¹ OAC sections 901:12-1-01 through 901:12-1-05 discuss euthanasia, the types of euthanasia allowed, how they are to be properly carried out, and the “acceptable euthanasia methods” for each species.³² Standards for proper feeding and watering, management, and transportation are also laid out by species.³³ The language for many of these standards is similar, with slight changes depending on the circumstances required for each species.³⁴ For example, the feed and water standards for beef cattle dictate that “[a]ll newborn calves must be offered colostrum, or a colostrum replacement within the first twenty-four hours of life.”³⁵ The beef cattle management practices allow for horn removal and castration, but call for “pain management” to be used when dehorning after the animal’s horns have emerged, and requires pain management for castration depending upon the “animal’s age and weight . . . as well as human and animal safety.”³⁶ The management standards for beef cattle also include housing requirements.³⁷ For example, “facilities or natural features that provide reasonable protection from adverse weather conditions and predators” must be provided, fencing and other enclosure structures “must be designed and maintained so as to minimize bruising and injury,” and there must be sufficient space so that it is possible for all cattle to lay down and so all animals have

28. OHIO DEP’T OF AGRIC., *supra* note 6.

29. *Id.*

30. *Id.*

31. OHIO ADMIN. CODE 901:12-1-05 to 901:12-15-05 (2013).

32. *Id.* 901:12-1-01 to 901:12-1-05.

33. *Id.* 901:12-5-02, 901:12-5-03, 901:12-6-01, 901:12-6-02, 901:12-6-03, 901:12-7-01, 901:12-7-02, 901:12-8-02, 901:12-8-03, 901:12-9-02, 901:12-9-03, 901:12-9-04, 901:12-10-02, 901:12-10-03, 901:12-10-04, 901:12-11-02, 901:12-11-03, 901:12-11-04, 901:12-12-01, 901:12-12-02, 901:12-13-01, 901:12-13-02, 901:12-14-02, 901:12-14-03, 901:12-14-04, 901:12-15-02, 901:12-15-03, 901:12-15-04.

34. *See id.* 901:12-5-02 to 901:12-15-04.

35. *Id.* 901:12-7-01. Colostrum is a protein-rich fluid secreted by female mammals when they first begin lactating after giving birth. It is typically beneficial to newborns of all species. *See Colostrum*, THE NEW LEXICON WEBSTER’S DICTIONARY OF THE ENGLISH LANGUAGE 194 (1988).

36. OHIO ADMIN. CODE 901:12-7-02(A).

37. *Id.* 901:12-7-02(B)–(D).

“access [to] feed and water without excessive competition.”³⁸ In addition, the beef cattle standards require that “[f]eeding[and] watering areas and alleys must be cleaned on a regular basis so as to be free of continual standing water and excess manure that may compromise the animal’s health and safety.”³⁹

As mentioned, most species have similar standards to follow, but there are some differences.⁴⁰ For example, management practices for swine differ somewhat from the beef management practices discussed above.⁴¹ The swine management practices adopted by the Board center on health and safety related to breeding and farrowing.⁴² Housing must “[p]rovide effective protection and [an] appropriate thermal environment for the piglets and comfort for the sow; and [b]e designed to maximize neo-natal piglet welfare”⁴³ The swine standards also provide for phasing out the use of gestation stalls, which can be used until December 31, 2025, and after that time, they “can only be used post weaning for a period of time that seeks to maximize embryonic welfare and allows for the confirmation of pregnancy.”⁴⁴ Similarly, under the standards for poultry layers, the Board included a phasing out of “conventional battery cage[s] systems.”⁴⁵ The standards dictate that poultry cages installed after the rules go into effect must have at least sixty-seven square inches per bird, and those already in place before the rule was adopted must be replaced by cages that are at least sixty-seven square inches within five years of the rule going into effect.⁴⁶

Finally, for some species, the Board included standards on how transportation of the animals is to be handled.⁴⁷ For instance, if transporting swine, particularly “a sow with her suckling litter,” the standards call for the sow to be separated from other animals and for proper protection of the litter during transport.⁴⁸ When transporting poultry, the density of birds must be low enough that the birds can rest simultaneously “without being forced to rest on top of each other.”⁴⁹ When transporting equines, suckling foals must not be transported with other animals except for their mothers, “[s]tallions and jacks must be separated from other equines,” the animals cannot be moved in “two-tiered or double-deck

38. *Id.* 901:12-7-02(B)(2)–(3), (C)(1).

39. *Id.* 901:12-7-02(C)(3).

40. *See generally id.* 901:12-5-02 to 901:12-15-04.

41. *Compare id.* 901:12-7 with, *id.* 901:12-8.

42. *See id.* 901:12-8-02.

43. *Id.* 901:12-8-02(D)(2)–(3).

44. *Id.* 901:12-8-02(G)(4).

45. *Id.* 901:12-9-03(F)(6).

46. *Id.* 901:12-9-03(F)(3)–(4).

47. *See e.g., id.* 901:12-6-03, 901:12-8-03.

48. *Id.* 901:12-8-03.

49. *Id.* 901:12-10-04.

semi-trailers . . . designed to transport” other species, and the animals must be able to stand upright without their heads touching the top of the trailer.⁵⁰ While the above discussion is not an exhaustive list of the standards, it is meant as an example of what the standards entail and how they might differ slightly from one species to another. These standards were Ohio’s first statutes regulating the care of many of the livestock species included.⁵¹

In addition to the actual care standards, the Board also approved civil penalties for violating said standards, codified in section 901:12-2-01 of the Ohio Administrative Code.⁵² The civil penalties are split into minor and major violations of the Livestock Care Standards.⁵³ Minor violations are those that “occur due to neglect or unintentional acts” and do not: “(1) [p]lace the animal’s life in imminent peril; or, (2) [c]ause protracted disfigurement; or, (3) [c]ause protracted impairment of health; or, (4) [c]ause protracted loss or impairment of the function of a limb or bodily organ.”⁵⁴ On the other hand, major violations of the Livestock Care Standards occur when a person does cause the above problems.⁵⁵ Major violations also result from “reckless or intentional acts which result in unjustifiable infliction of pain.”⁵⁶ If the Ohio Department of Agriculture (ODA) decides that the “owner of the livestock and a person who has current custody or responsibility of the livestock” is guilty of a violation, it is to inform the responsible party initially in person, or via phone call, fax, or email, and within three business days, in writing.⁵⁷ For minor violations, the ODA can fine the violator up to \$500 for the first offense and up to \$1000 for each subsequent offense.⁵⁸ If major violations take place, the ODA can fine the violator \$1000 to \$5000 for the first violation, and from \$5000 to \$10,000 for future violations.⁵⁹ Furthermore, for major violations, the ODA can assist state, local, and nongovernmental agencies in “provid[ing] proper care for the animal including, but not limited to: (a) [f]eeding and watering; or, (b) [p]roviding medical care; or, (c) [a]ctions necessary to take possession of the livestock; or, (d) [e]uthanasia and disposal.”⁶⁰ Not long after the care standards went into effect in Ohio, five complaints were re-

50. *Id.* 901:12-15-04(A), (B), (C), (E).

51. *Livestock Care Standards Advance Without Enforcement Plan*, Sentient CINCINNATI, *supra* (Apr. 25, 2011), <http://sentientcincinnati.com/2011/04/25/livestock-care-standards-advance-without-enforcement-plan/>.

52. OHIO ADMIN. CODE 901:12-2-01.

53. *Id.* 901:12-2-01(A)–(B).

54. *Id.* 901:12-2-01(A)(1)–(4).

55. *Id.* 901:12-2-01(B).

56. *Id.*

57. *Id.* 901:12-2-01(D).

58. *Id.* 901:12-2-01(F).

59. *Id.* 901:12-2-01(G).

60. *Id.* 901:12-2-01(G)(2)(a)–(d).

solved.⁶¹ For a more complete explanation of these reported violations, please see Part IV.

IV. HAVE THE OHIO LIVESTOCK CARE STANDARDS BEEN SUCCESSFUL?

To determine the success of the Ohio Livestock Care Standards, we must first examine what laws regulated the care of livestock animals before the standards were put into place. Prior to the passage of the Livestock Care Standards, Ohio had codified animal cruelty laws, which are still in effect today.⁶² Ohio's animal cruelty laws prohibit the abandonment of a domestic animal,⁶³ the malicious or willful injuring of a domestic animal (including livestock animals),⁶⁴ the administering of poison to a domestic animal unless done by a veterinarian,⁶⁵ the injuring or killing of a domestic animal that is trespassing,⁶⁶ and the drugging of an animal forty-eight hours before the animal competes in an exhibition.⁶⁷ Additionally, the statutes prohibit the torturing of an animal by depriving it of food, beating it, impounding an animal without allowing it access to shelter from the elements, or by keeping livestock in railroad cars longer than twenty-eight hours without giving them enough space, water, and food.⁶⁸ The Ohio Code also previously prohibited the docking or cutting of horses' tails,⁶⁹ or "pitting an animal against another" in a fight.⁷⁰ Finally, Ohio law included prohibitions on the use of certain devices on livestock termed "work animals," which includes "a horse, pony, mule, donkey, mare, ox, bull, gelding, or other animal used or intended to be used for a work purpose."⁷¹ The law dictates that "twisted wire snaffles, unpadded bucking straps, unpadded flank straps, electric or other prods, or similar devices" are not to be placed or used on any work animal.⁷² Notably, the previous Ohio laws concerning animal care and cruelty did not prohibit keeping livestock such as cattle, poultry, swine, sheep, or goats "in an enclosure without

61. Chris Kick, *Ohio Care Board Reviews First Animal Care Complaints, Charts New Year*, FARM & DAIRY (Nov. 2, 2011), [hereinafter Kick, *Care Board Reviews*] <http://www.farmanddairy.com/news/ohio-care-board-reviews-first-animal-care-complaints-charts-new-year/31247.html>.

62. Hall, *supra* note 12.

63. OHIO REV. CODE ANN. § 959.01 (West 2013).

64. *Id.* § 959.02.

65. *Id.* § 959.03.

66. *Id.* § 959.04.

67. *Id.* § 959.05.

68. *Id.* §§ 959.13(A)(1), (5).

69. *Id.* § 959.14.

70. *Id.* § 959.15.

71. *Id.* § 959.20(A).

72. *Id.* § 959.20.

wholesome exercise and change of air.”⁷³ For most violations under these early animal cruelty statutes, the violator would be guilty of a misdemeanor.⁷⁴

While these animal cruelty laws were beneficial to animal safety and care, and certainly work toward the prevention of horrendous acts against animals, they are arguably not as thorough as the new Livestock Care Standards. Having the Livestock Care Standards in addition to the previous animal cruelty laws is a step forward in the area of livestock welfare in Ohio. Unlike the animal cruelty laws already in place, the Livestock Care Standards lay out specific rules regarding each species of livestock, and how that species is to be legally euthanized, housed, fed and watered, and transported.⁷⁵ The previous animal cruelty laws prohibited only certain egregious actions and did not include language on how to *properly* care for livestock, only how certain actions were *improper*.⁷⁶ Most of the previously passed laws dealt with all domestic animals in general—there were only a few references to prohibited actions involving specific species.⁷⁷ Moreover, the older Ohio animal laws included a provision that animals were to be kept “in an enclosure” that provided room for movement, exercise, and fresh air, but it specifically did *not* apply to livestock animals.⁷⁸ The new Livestock Standards, on the other hand, call for explicit space requirements for veal calves,⁷⁹ gestating sows and gilts,⁸⁰ and poultry,⁸¹ and dictate that each type of livestock be housed in a way that allows all animals “to easily lie down at the same time in a normal resting posture and be able to easily stand back up at all stages of production.”⁸² Therefore, the new Livestock Care Standards undoubtedly enhance the older animal care statutes, which did not apply spacing rules to livestock animals.⁸³

Ohio’s previous animal cruelty laws did not spell out exactly who would enforce the laws or how they would be enforced.⁸⁴ The Livestock Care Standards, in contrast, clearly state that the Director of Agriculture is responsible for hiring employees of the board, and the Director and these other employees are to “investigate complaints regarding violations” of the standards and enforce the

73. *Id.* § 959.13(A)(4).

74. *Id.* § 959.99.

75. *See* OHIO ADMIN. CODE 901:12-5 to 901:12-15 (2013).

76. *See* OHIO REV. CODE ANN. §§ 959.01–99.

77. *See, e.g., id.*

78. *Id.* § 959.13(A)(4).

79. OHIO ADMIN. CODE 901:12-5-03(C).

80. *Id.* 901:12-8-02(B).

81. *Id.* 901:12-9-03(F).

82. *Id.* 901:12-7-02(B)–(D).

83. *See* OHIO REV. CODE ANN. § 959.13.

84. *See id.* §§ 959.01–99.

standards by “levy[ing] the civil penalties established by those rules.”⁸⁵ Furthermore, the Livestock Care Standards allow the Director or his “authorized representative,” “with the consent of the premises owner . . . [to] enter at all reasonable times on any premises for the purpose of determining compliance with the rules.”⁸⁶ If the premises owner denies access to the Director, the Director may be issued a search warrant if there is probable cause, which may be based on hearsay regarding violations.⁸⁷ Ohio’s new Livestock Care Standards give real enforcement power to a named entity, whereas the animal laws previously on the books do not include specifics regarding who is in charge of investigating the violations, how investigations should be carried out, or how penalties should be enforced.⁸⁸ In addition, Dr. Tony Forshey, the state veterinarian of Ohio, “emphasized that his inspectors will work with farmers rather than simply penalizing them.”⁸⁹ This approach was put to work within the first month after the effective date of the Livestock Care Standards.⁹⁰

Shortly after the law went into effect, five complaints, ranging from improper euthanasia of chickens, to improper feeding of dairy cattle, to improper housing for horses had “been resolved with the owners’ cooperation, and no fines were issued.”⁹¹ In these instances, the owners “just need[ed] a little prodding” to fix the problems; however, “[i]f an issue is not corrected within the time given, civil penalties and fines can be imposed.”⁹² Thus far, at least one horse farmer failed to change practices after receiving a warning, and as a result, “could face legal action.”⁹³ By September of 2012, the Ohio Department of Agriculture had looked into complaints at fifty-six farms and had discovered twenty-eight violations.⁹⁴ It seems as though Dr. Forshey’s approach is a good one—give animal owners a chance to fix the problem, and if they fail to do so, there is always a way to punish further violations. The “[i]nspectors and veterinarians” carrying out compliance of the standards have certainly been busy—“logg[ing] more than 30,000 miles and spen[ding] 966 hours enforcing the livestock standards”⁹⁵

85. *Id.* §§ 904.04(A)(5)–(6).

86. *Id.* § 904.04(B).

87. *Id.*

88. *Compare id.* § 904.04, with *id.* §§ 959.01–.99.

89. Johnson, *supra* note 5.

90. Kick, *Care Board Reviews*, *supra* note 61.

91. *Id.*

92. *Id.*

93. Donna J. Miller, *Reviews Find 28 Violations of New Livestock Care Standards: Animals in the News*, CLEVELAND.COM (Sept. 10, 2012), http://www.cleveland.com/metro/index.ssf/2012/09/_animals_in_the_news_20.html.

94. *Id.*

95. *Id.*

Overall, HSUS has been “pleased with the work.”⁹⁶ HSUS, however, does have some problems with the way complaints are handled.⁹⁷ For example, HSUS has “concerns about the fact that . . . anonymous reports” are not accepted, which deters “whistle blowers from coming forward without fear of repercussions.”⁹⁸ HSUS’s concerns with reporting pale in comparison to their original concerns before the passage of the amendment and creation of the Standards. Therefore, it is a measure of success that HSUS likes the way violations have been handled for the most part.

As discussed above in Part II, the Ohio Livestock Care Standards came about in order to keep HSUS from passing a ballot initiative in Ohio regarding farm animal welfare. When the formation of the Ohio Livestock Standards amendment was taking place in the summer of 2009, Wayne Pacelle, head of HSUS, was committed to fighting it—calling it “a transparent attempt by agribusiness interests’ to thwart a [HSUS] ballot initiative on animal confinement.”⁹⁹ Pacelle also said the Board would be “industry dominated” and “would seek to embrace the status quo in Ohio agriculture.”¹⁰⁰ However, by the summer of 2011, after the standards were unveiled, Pacelle had changed his tune.¹⁰¹ He was “happy with the results of negotiations” and said “[i]n general, we’re very pleased how the farm-animal-piece turned out. They [the Board] handled it more comprehensively than our agreement called for.”¹⁰²

Before the creation of the standards in the summer of 2009, Pacelle said his organization hoped to use the Ohio Livestock Care Standards as “a model for the nation in negotiating instead of a bitter political battle” between animal rights groups and livestock groups.¹⁰³ HSUS and other animal welfare groups had plenty of reasons to be happy with the results of the Ohio amendment. First, the Livestock Care Standards Board must include “[o]ne member representing a county humane society,” “[t]wo members of the public,” one licensed veterinarian, and at any given time, “[n]ot more than seven members . . . [may] be of the same political party.”¹⁰⁴ Thus, the Board is not just made up of agricultural interests but also includes the animal rights perspective, as well as the perspective of the general public. The make-up of the Board allows for true negotiation between diverse groups and ideas.

96. *Id.*

97. *Id.*

98. *Id.*

99. Kinney, *supra* note 9.

100. *Id.*

101. Johnson, *supra* note 5.

102. *Id.*

103. *Id.*

104. OHIO REV. CODE ANN. § 904.02(A)(2)(d), (g), (h).

Before the passage of the Care Standards, a hearing was held in the Ohio House and Senate Agricultural Committees about the pros and cons of having Standards and a Board.¹⁰⁵ During that hearing, “[t]he only opponent testimony came from a representative of the Humane Society of the United States.”¹⁰⁶ On February 3, 2010, before the implementation of the amendment, the Agriculture Committee in the Ohio House listened to opponent testimony.¹⁰⁷ The main opposition came in the form of worries about the cost of implementing the law.¹⁰⁸ For example, a tax would be added to animal feed, which some farmers argued would “be a financial burden that will cause many of us to exit livestock production . . . in Ohio.”¹⁰⁹ In addition, despite the added cost, it is arguable that if the passage of the Standards had failed, there would have been a higher added cost to an HSUS-backed bill.¹¹⁰ For example, Ohio farmers could have been forced to pay for “changes to farm practices,” such as implementing new livestock enclosures similar to those passed in California’s Proposition 2.¹¹¹

Since its passage in 2009 and implementation in 2012, the Livestock Care Standards have been successful. The Standards added more detail to the animal welfare laws Ohio previously had on the books,¹¹² as well as created a party responsible for implementing the laws and punishing violators.¹¹³ Evidence shows complaints of animal abuse, poor care, and mistreatment have been investigated, and violations have been found.¹¹⁴ The Standards have only been implemented for a year, so only time will tell if violators are actually punished and real promotion of animal welfare is realized. That being said, to date the Livestock Care Standards have been decided upon through negotiations with the Board, and violations have been reported and found—which is an improvement from the status quo and is what the Standards set out to do in the first place.¹¹⁵

105. See *Take Care: Farmers Say Proposed Livestock Board is Good for Ag & Consumers*, OHIO FARM BUREAU (July 16, 2009), <http://ofbf.org/news-and-events/news/357/>.

106. *Id.*

107. Chris Kick, *Opponents of Livestock Care Board Testify in Columbus*, FARM & DAIRY (Feb. 4, 2010), <http://www.farmanddairy.com/news/opponents-of-livestock-care-board-testify-in-columbus/14174.html>.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. See OHIO REV. CODE ANN. §§ 959.01–99 (West 2013); OHIO ADMIN. CODE ANN. 901:12-1 to 901:12-15 (2013).

113. See OHIO REV. CODE ANN. § 904.02.

114. See Miller, *supra* note 93.

115. See Johnson, *supra* note 5; Miller, *supra* note 93.

V. HOW DO OTHER STATES AND THE FEDERAL GOVERNMENT HANDLE
LIVESTOCK WELFARE?

Since the passage of the amendment establishing the Ohio Livestock Care Standards Board, several other states—including Illinois, Indiana, Kentucky, Louisiana, Utah, Vermont, and West Virginia—have implemented similar boards and animal care laws.¹¹⁶ Other states such as Maine¹¹⁷ and New Jersey¹¹⁸ created similar livestock care boards before Ohio did. Skeptics point to the fact that the state boards created after Ohio’s Board did not include as much detail in their standards as Ohio, which, it is argued, will make other states’ standards “difficult to enforce.”¹¹⁹ For instance, the Indiana Board of Animal Health did not create different standards for each species of livestock.¹²⁰ Instead, the Indiana Board has broad language applying to all species in its regulations such as: “[a] person responsible for caring for livestock or poultry must provide the animals access to food and water that can reasonably be expected to maintain the health of animals of that species, breed, sex, and age, raised using the applicable production method,” that the person responsible must “provide . . . access to sufficient shelter,” “take reasonable measures to protect the animals from an injury or disease,” and that they must “use methods and equipment that can reasonably be expected to prevent an injury” to the animal.¹²¹ The Indiana standards are a far cry from Ohio’s standards, which contain proper care guidelines according to species.¹²²

Another problem asserted with some of the boards created in other states is that they lack actual power.¹²³ For example, “[b]oth Kentucky and Utah created advisory boards rather than independent entities with authority to adopt and propose regulations.”¹²⁴ Ohio’s Board, on the other hand, is charged with “adopt[ing] rules . . . governing the care and well-being of livestock in [the] state.”¹²⁵ One final problem with the livestock standards passed in other states is

116. 20 ILL. COMP. STAT. ANN. 5/5-525 (West 2013); IND. CODE ANN. § 15-17-3-23 (West 2013); KY. REV. STAT. ANN. § 257.192 (West 2013); LA. REV. STAT. ANN. § 3:2093 (West 2012); UTAH CODE ANN. § 4-2-7 (West 2013); VT. STAT. ANN. tit. 6, § 792 (West 2013); W. VA. CODE ANN. § 19-1C-3 (West 2013).

117. ME. REV. STAT. ANN. tit. 7, § 3906-C (West 2012).

118. N.J. STAT. ANN. 4:22-16.1 (West 2013).

119. Vick, *supra* note 1, at 167.

120. 345 IND. ADMIN. CODE 14-1-2 to 14-2-5 (West 2013).

121. *Id.* 14-2-1; *see also* Vick, *supra* note 1, at 166–67.

122. *See* OHIO ADMIN. CODE 901:12-1-05 to 901:12-1-15 (2013).

123. *See* Vick, *supra* note 1, at 168–69.

124. Vick, *supra* note 1, at 168 (citing KY. REV. STAT. ANN. § 257.192; UTAH CODE ANN. § 4-2-7).

125. OHIO REV. CODE ANN. § 904.03(A) (West 2013).

that some states do not have diverse boards.¹²⁶ The Illinois Advisory Board of Livestock Commissioners, for example, is made up almost entirely of people involved in the agriculture industry,¹²⁷ unlike Ohio's Board, which contains members of the public and local humane societies in addition to representatives of the agriculture industry.¹²⁸ As states continue to follow Ohio's lead in the establishment of livestock care boards and standards, they should follow Ohio's standards in their thoroughness, in the power given to the board, and in the diverse make-up of the board, or their standards may prove inadequate.

Other states seem to be creating livestock welfare law in a more piecemeal manner, such as Arizona, California, Colorado, Florida, Maine, Michigan, and Oregon who have laws on the books limiting confinement practices related to certain species—mostly gestating sows and veal calves.¹²⁹ While these laws do address certain livestock welfare issues, they are specific to only a few species. Other examples of livestock care and animal welfare state statutes include the Texas Cruelty to Livestock Animals Act, which makes it a criminal misdemeanor to torture, withhold food, abandon, or overwork a livestock animal, among other things,¹³⁰ and the Nebraska Livestock Animal Welfare Act, which makes it a criminal misdemeanor to abandon, neglect, or “cruelly mistreat[] a livestock animal.”¹³¹ Notably, the Texas and Nebraska laws do not have separate, detailed standards for each livestock species, and they do not implement a board to create and oversee standards.¹³² Instead, Texas and Nebraska laws are similar to the early laws Ohio had (and still has) on the books regarding animal cruelty.¹³³

At the federal level, the United States has only two laws on the books that specifically govern livestock welfare: the Twenty-Eight Hour Law and the Humane Methods of Slaughter Act (HMSA).¹³⁴ These laws were enacted in 1877 and 1958, respectively.¹³⁵ HMSA legislates what its name would suggest—it only allows for the humane slaughter of livestock, and it briefly states what methods are considered humane.¹³⁶ The Twenty-Eight Hour Law states that no “owner or master of a vessel transporting animals” within the United States can

126. See Vick, *supra* note 1, at 168–70.

127. See 20 ILL. COMP. STAT. ANN. 5/5-525 (West 2013).

128. OHIO REV. CODE ANN. §§ 904.02(A)(2)(g)–(h).

129. See Springsteen, *supra* note 1, at 440–455.

130. TEX. PENAL CODE ANN. § 42.09(a) (West 2013).

131. NEB. REV. STAT. ANN. § 54-903 (West 2012).

132. See *id.*; see also TEX. PENAL CODE ANN. § 42.09.

133. See OHIO REV. CODE ANN. §§ 959.01–99.

134. Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, and Trade*, 70 LAW & CONTEMP. PROBS. 325, 334 (2007).

135. *Id.*

136. 7 U.S.C. §§ 1901–1907 (2013).

“confine animals in a vehicle for more than [twenty-eight] consecutive hours without unloading the animals for feeding, water, and rest.”¹³⁷ Another federal animal-protection law is the Animal Welfare Act (AWA).¹³⁸ The AWA generally does not apply to livestock or “farm animals . . . used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.”¹³⁹ Instead, the AWA mostly applies to the types of animals kept as pets—such as dogs, cats, hamsters, and rabbits—and governs the humane treatment of these types of animals in research and in commerce.¹⁴⁰ Thus, there are essentially no federal laws for the humane treatment of livestock animals for times when such animals are not being slaughtered, transported, or used for research, and certainly no federal laws that measure up to the thoroughness of the Ohio Livestock Care Standards.¹⁴¹

VI. OHIO LIVESTOCK CARE STANDARDS AS A MODEL FOR STATE AND FEDERAL ACTION IN THE LIVESTOCK WELFARE ARENA

The Ohio Livestock Care Standards should be used as a model for other states’ livestock welfare laws, as well as a blueprint for the federal government on this topic. The Ohio law is not without its critics. Some claim that the Ohio Livestock Care Standards amendment has simply codified practices already used in the agriculture industry.¹⁴² They argue that not many actual changes have been made through the Ohio Standards and that there are not enough representatives of animal rights included on the Board.¹⁴³ However, there are members of the public and of local humane societies on the Ohio Livestock Care Standards Board.¹⁴⁴ The people of Ohio approved the Board, so if the make-up of the Board was something the voters disliked, they had every chance to vote the proposed amendment down. Additionally, the Standards are not stagnant and unchanging; they can be edited and improved by future boards. The Ohio Livestock Care Standards will gradually require farmers to change the way certain animals are confined.¹⁴⁵ These changes are not instantaneous for a reason—the Standards

137. 49 U.S.C. § 80502(a) (2013).

138. Matheny & Leahy, *supra* note 134, at 334.

139. 7 U.S.C. § 2132(g) (2013).

140. *Id.* at §§ 2131–2132.

141. *See* Matheny & Leahy, *supra* note 134, at 334–36.

142. *See* Vick, *supra* note 1, at 159–60 (pointing out previously enacted laws which are duplicated in Ohio’s Livestock Care Standards).

143. *Id.* at 155–56.

144. OHIO REV. CODE ANN. §§ 904.02(g)–(h) (West 2013).

145. *See, e.g.*, OHIO ADMIN. CODE 901:12-8-02(G)(4) (2013).

provide a balance between needed improvements and ensuring that farmers are not forced to make changes all at once, which could be financially crippling to some. Finally, what some critics fail to mention is that HSUS has publicly praised the Ohio Livestock Care Standards, saying that they are “very pleased with how the farm-animal piece turned out. [Ohio’s Board] handled it more comprehensively than our agreement called for.”¹⁴⁶ In order to actually make a difference in the area of livestock welfare, as well as work with the livestock industry, other states should strive to make their standards as detailed as Ohio’s. States should also work to make their boards diverse and give them the ability to create real change instead of just suggesting what can be done.

States that have not adopted any standards should follow the example of Ohio and create their own boards to adopt standards. Piecemeal laws on the confinement of certain species in states like Arizona, California, Colorado, Florida, Maine, Michigan, and Oregon¹⁴⁷ and broad animal cruelty laws in states like Nebraska and Texas¹⁴⁸ are not as detailed and all-encompassing as the Ohio Livestock Care Standards. The Ohio Standards provide standards for *all* livestock animals—confinement standards, feed and water standards, handling and transportation standards—in one place.¹⁴⁹ On the other hand, states with broad animal cruelty or confinement laws for certain species have to pass each law one by one.¹⁵⁰ Arguably, the Ohio Board is capable of achieving more protection for the welfare of farm animals more quickly than states where each animal welfare law has to be passed one at a time. In addition, the Ohio Board is made up of animal health experts, farmers, and others familiar with the agricultural industry, along with members of the public and local humane societies.¹⁵¹ Since a board comprised of both agriculturalists and representatives of competing interests makes Ohio’s decisions about animal welfare, it ensures that the Standards are reached through compromise without ignoring the voices of the people who are most familiar with directly caring for livestock: farmers and veterinarians. Therefore, Ohio’s Standards provide a much better system than piecemeal laws because they ensure that all sides are heard, but at the same time, prevent outside groups from coming in and imposing rules on an important industry without that industry’s consent.

146. Johnson, *supra* note 5.

147. See Springsteen, *supra* note 1, at 440–55.

148. See NEB. REV. STAT. ANN. § 54-903 (West 2012); TEX. PENAL CODE ANN. § 42.09 (West 2013).

149. See OHIO ADMIN. CODE 901:12.

150. See, e.g., 20 ILL. COMP. STAT. 5/5-525 (West 2013).

151. OHIO REV. CODE ANN. § 904.02 (West 2013).

Finally, the Ohio Livestock Care Standards provide a good framework for possible federal livestock welfare standards. Since the federal government essentially has no laws for the humane treatment of livestock animals for times when such animals are not being slaughtered, transported, or used for research, the federal government should look to Ohio's Board and the Standards they promulgated for inspiration.¹⁵² The federal government should allow states to have their own livestock care boards to make their own rules, but the federal government should also create a board to oversee the state boards. This United States Livestock Care Board would be non-partisan and made up of farmers, veterinarians, people from the animal welfare movement, and citizens. The federal board would come up with broad standards or goals for the state boards to meet. For example, Ohio could make its own rules with respect to how much room gestating sows should have, and it could provide more room than the federal standards, but not less. If the state boards do not come up with standards within the federal guidelines, the government could possibly withhold federal aid from the states in the area of livestock subsidies. A federal board with broad goals would help guarantee that no state had lax livestock standards, and further, it would help to create some uniformity in standards throughout the United States.

VII. CONCLUSION

In 2009, Ohioans voted for an amendment to their constitution that would create a board to craft and implement livestock care standards for the state.¹⁵³ The state of Ohio chose this route in order to prevent "debate on the issue" of livestock welfare from being driven solely by the HSUS.¹⁵⁴ The amendment was passed, and a board was created which included veterinarians, representatives of agricultural interest groups, members of the general public, and animal welfare groups.¹⁵⁵ The Ohio Livestock Care Standards Board then created specific guidelines for the care of each species and penalties for violating the guidelines.¹⁵⁶

The Ohio Livestock Care Standards have arguably been successful. They have improved on and added more specifics to Ohio's animal cruelty laws that were previously on the books.¹⁵⁷ Violations of the Standards have been found and corrected.¹⁵⁸ In addition, HSUS, which was originally opposed to and

152. See Matheny & Leahy, *supra* note 134, at 334–36.

153. Springsteen, *supra* note 1, at 456; Johnson, *supra* note 5.

154. Kinney, *supra* note 9.

155. OHIO REV. CODE ANN. § 904.02.

156. OHIO ADMIN. CODE 901:12-1 to 901:12-15-04 (2013).

157. See OHIO REV. CODE ANN. §§ 959.01–.99.

158. Kick, *Care Board Reviews*, *supra* note 61.

committed to fighting the Ohio Livestock Care Standards, has since come out in support of them.¹⁵⁹

Other states have created their own standards boards, but these boards tend to lack the detailed guidelines, power, and diversity of the Ohio Board.¹⁶⁰ States that do not have standards boards have approached livestock welfare in a less comprehensive, more piecemeal manner—passing laws one by one.¹⁶¹ The federal government has few laws on the books to regulate the treatment of livestock.¹⁶²

States and the federal government should look to Ohio's Livestock Care Standards and Ohio's Board when creating their own boards and standards. Critics of Ohio's Board claim the Ohio Livestock Care Standards have not changed anything—they have simply codified the status quo.¹⁶³ The Ohio Standards have created changes, and they have done so in a workable manner that is open to compromise. Instead of one outside group implementing what they think animal agriculture should look like, the Ohio Standards strive to incorporate various points of view, allowing both farmers and animal welfare groups to have their say. This compromise has resulted in actual change at a pace that is feasible for farmers' pocketbooks. Other states should create boards and standards that similarly allow for change and compromise while protecting a very important national industry and way of life.

With its Livestock Care Standards Board, Ohio came up with an innovative way to address a conflict between animal welfare groups and agriculture. Livestock welfare will likely continue to be an important issue throughout the United States. If other states and the federal government adopt standards and create boards similar to Ohio's, with the same level of detail and diversity, the welfare of the nation's livestock will certainly improve by following the input of animal rights activists, veterinarians, citizens, and perhaps most importantly—livestock farmers.

159. Johnson, *supra* note 5.

160. See 20 ILL. COMP. STAT. 5/5-525 (West 2013); 345 IND. ADMIN. CODE 14-1-2 to 14-2-5 (West 2013); Vick, *supra* note 1, at 169–70 (discussing the limitation of standards boards in states such as Kentucky, Utah, and Louisiana).

161. See Springsteen, *supra* note 1, at 440–55.

162. See Matheny & Leahy, *supra* note 134, at 334–36.

163. See Vick, *supra* note 1, at 154–56.