
IT COSTS HOW MUCH TO GET RID OF MY HORSE?!? WHY THE ECONOMIC DOWN TURN HAS ILLUSTRATED THE NEED FOR HORSE SLAUGHTER FACILITIES

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I. INTRODUCTION

The logic and ethics of banning the slaughtering of horses is no easy task to tackle. Having an animal die is an unwanted part of life, but letting an animal suffer is a far greater travesty. This is what is occurring every day for horses in the United States. If you take a drive across rural America, it is easy to see the importance of horses to American culture with the numerous horses, horse barns, and horse pastures that dot the country. America’s love of horses is not a recent phenomenon—it goes back to the idea of the majestic Wild West, where horses were an essential element in the settling of the West.¹ As such, Americans revere horses as companion animals that deserve the very best of attention and care. Cruel treatment, neglect, abandonment, and even eating horses is not seen as an

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1. See Vicki Mabrey, *Horse Slaughter Industry May Be on Its Last Legs*, ABC NEWS (Sept. 6, 2006), <http://abcnews.go.com/Nightline/story?id=2396197&page=1>.

acceptable way for humans to treat members of the equine family, and slaughter is absolutely verboten.² To ensure these esteemed companion animals are treated properly, states have enacted statutes forbidding the cruel treatment of animals (including horses), banned horse slaughter, and taken steps to deal with abandoned horses.³ While these measures seem to be necessary and helpful to the care and welfare of horses, has the virtual ban of horse slaughter really supported these goals?

To help illustrate the problem that has arisen from the elimination of horse slaughter facilities in the United States, imagine arriving at one of the many horse barns that are scattered across the country. Before you even set foot inside the stable, you smell the terrible stench of feces, urine, and mud.⁴ As you continue to investigate further, you find the sources of the smell—several horses standing up to their ankles in waste.⁵ In addition, there is only a one-half bale of hay on the property to feed nineteen horses.⁶ Aside from the lack of feed, there is no water⁷ and the horses are in need of immediate veterinary help.⁸ Unfortunately, this is not just a tale—it is a true story of the horses on the Rambling River Ranch in Connecticut.⁹ The worst part of stories like this is that they are not unique; stories like this are becoming all too common.¹⁰ In tough financial times, people are having difficulty keeping their homes and feeding their families, let alone trying to feed and care for their equine companions. Selling these animals is nearly impossible as the market for horses has dropped drastically,¹¹ the cost to properly dispose of a horse can be prohibitive,¹² equine/large animal shelters are

2. German for “forbidden.”

3. See, e.g., 225 ILL. COMP. STAT. ANN. 635/1.5 (West 2012); LA. REV. STAT. ANN. § 3:2452 (2011); 18 PA. CONS. STAT. ANN. § 5511(c) (West 2008); TEX. AGRIC. CODE ANN. § 149.002 (West 2004).

4. Connecticut *ex rel.* Connors v. Nineteen Horses, No. CV106006563S, 2010 Conn. Super. LEXIS 149, at *2 (Conn. Super. Ct. Jan 15, 2010).

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.*

9. *Id.* at *1.

10. Jim Mustian, *Horse Neglect Reaches Alarming Level Across Georgia*, LEDGER-ENQUIRER, Feb. 27, 2011, <http://www.ledger-enquirer.com/2011/02/27/1476271/ledger-enquirer-special-report.html>.

11. Steve Miller, *SDSU Students Outline Unwanted Horse Problem*, RAPID CITY J., Jan. 30, 2011, http://rapidcityjournal.com/news/stock-show/stock-show-news/article_d0cd7956-2c33-11e0-9238-001cc4c002e0.html; Megan Wilde, *Horses to the Slaughter*, SALON.COM (June 30, 2009), http://www.salon.com/2009/06/30/horse_slaughter/.

12. See UNWANTED HORSE COAL., AM. HORSE COUNCIL, OWN RESPONSIBLY: GUIDANCE FOR CURRENT AND POTENTIAL HORSE OWNERS FROM THE UNWANTED HORSE COALITION 22 (2007), available at http://www.unwantedhorsecoalition.org/resources/book_web.pdf.

overflowing,¹³ and slaughter is no longer an option in this country.¹⁴ People are not left with economic and humane options. It is unfortunate, but people are forced to neglect and abandon their horses in order to make ends meet, which has resulted in an increase in inhumane treatment of these unwanted horses.

Since the Illinois Supreme Court held that horse slaughter for human consumption was illegal, horse slaughter has been a topic that has stirred up a heated debate and strong opinions on both sides of the issue.¹⁵ The actual method of death itself is a humane practice that is approved by the American Veterinary Medical Association (AVMA).¹⁶ The AVMA has approved the penetrating captive bolt as an acceptable method for slaughterhouses to use—not just for horses, but also for cattle, pigs, lab rabbits, and dogs.¹⁷ A penetrating captive bolt provides enough power for a projectile to sever the connection between the cerebral hemisphere and the brainstem, causing unconsciousness followed by death.¹⁸ A penetrating captive bolt is an effective and humane slaughter method used in slaughterhouses, as long as the equipment is maintained and properly used.¹⁹

Supporters of horse slaughter say it is one way to recoup part of the cost of owning and caring for a horse,²⁰ as well as setting the base price for the horse market as a whole.²¹ Opponents to horse slaughter say it is an inhumane procedure for any animal to have to suffer, let alone a beloved companion animal.²² Both sides say they have the welfare of horses as their primary concern, but has a virtual horse slaughter ban really helped end the suffering of horses after they are no longer wanted? In the U.S. alone, it is estimated that there are 125,000 un-

13. Marie Rosenthal, *Unwanted Horses: Rescue and Sanctuary Organizations Unable to Keep Up*, THEHORSE.COM (Oct. 7, 2010), <http://www.thehorse.com/articles/26236/unwanted-horses-rescue-and-sanctuary-organizations-unable-to-keep-up>.

14. See Rick Berman, *FoodPolitik: The Unintended Consequences of Banning Horse Slaughter*, THE DAILY CALLER (Jan. 10, 2011), <http://dailycaller.com/2011/01/10/foodpolitik-the-unintended-consequences-of-banning-horse-slaughter/>.

15. See *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544 (7th Cir. 2007), *appeal dismissed and injunction denied*, 500 F.3d 551 (7th Cir. 2007).

16. AM. VETERINARY MED. ASS'N, AVMA GUIDELINES FOR THE EUTHANASIA OF ANIMALS: 2013 EDITION, at 35 (2013), available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>.

17. *Id.*

18. *Id.*

19. *Id.*

20. Mabrey, *supra* note 1.

21. Malinda Larkin, *Closing of U.S. Horse Slaughter Plants Still Reverberates: GAO Study Asks Congress to Fund Inspections or Institute Permanent Ban*, JAVMA NEWS (Aug. 15, 2011), <https://www.avma.org/News/JAVMANews/Pages/110815a.aspx>.

22. See Mabrey, *supra* note 1.

wanted horses every year.²³ Now that horse slaughter facilities are closed, where are these 125,000 unwanted horses going each year? Who is responsible for caring for them?

Part II of this Note discusses the effects of the horse slaughter ban combined with the impact that the economic downturn has had on unwanted horses. These negative impacts include, but are not limited to, shipping horses to Canada and Mexico in inhumane conditions, abandoning horses to the wild, neglect, and the huge influx of horses on large animal shelters. While horse lovers everywhere are concerned about the general welfare of horses, slaughter is not the biggest problem that unwanted horses might face today. Part III discusses the responsibility that an owner of an unwanted horse has in owning and disposing of that animal. Part IV of this Note looks at the history of horse slaughter and the consumption of horsemeat in the United States. Part V discusses the history and current status of the law on horse slaughter. This includes the federal Horse Slaughter Prevention Act, the federal government defunding horse slaughterhouse inspectors, the closure of slaughterhouses in Texas and Illinois, and the recent attempts by states to bring back horse slaughter. Finally, Part VI addresses what should be done to help decrease the instances of abandonment and neglect.

II. THE UNINTENDED EFFECTS OF ENDING HORSE SLAUGHTER IN AMERICA

The goal of ending horse slaughter was to stop an inhumane practice against a companion animal.²⁴ It was a simple enough and reasonable enough goal. People were concerned about the welfare of horses throughout the slaughter process.²⁵ However, what those in support of the horse slaughter ban failed to take into account was where the hundreds of thousands of unwanted horses would go. Banning an “evil” does not always create the ideal solution.

The largest population affected by the virtual horse slaughter ban is unwanted horses; not those who banned slaughter, not those who worked in the horse slaughter facilities, and certainly not the horses who have a caring home. According to the Unwanted Horse Coalition, unwanted horses are not limited to old, ill, or neglected horses.²⁶ It includes horses that are too expensive for an owner to care for, a pony that a child has out grown, or horses that no longer

23. Amanda M. House, *Own Responsibility with the Unwanted Horse Coalition*, UNIV. OF FLA. COLL. OF VETERINARY MED., <http://extension.vetmed.ufl.edu/files/2011/10/Own-Responsibility-with-the-Unwanted-Horse-Coalition.pdf> (last visited July 28, 2013).

24. *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544, 548 (7th Cir. 2007), *appeal dismissed and injunction denied*, 500 F.3d 551 (7th Cir. 2007).

25. House, *supra* note 23.

26. UNWANTED HORSE COAL., *supra* note 12, at 8.

have a practical use for the owner.²⁷ This means that there are perfectly healthy horses falling into the category of “unwanted.” This only makes the problem of what to do with an unwanted horse more difficult because it is one thing to put down an old, ill horse where the only humane thing is to end its suffering, but putting down horses that still have a full life ahead of them is a terrible thought. Unwanted horses suffer in ways that are equally, if not more, terrible than slaughter because their owners are abandoning or neglecting them. Large animal shelters are not able to handle the number of horses that have been abandoned.²⁸ Unwanted horses are also being shipped to Mexico and Canada to be slaughtered, but under vastly different slaughtering standards than the United States would require.²⁹

Equine rescue and sanctuary organizations are massively overwhelmed with the number of horses that need care. There are a total of 236 registered rescue locations in the U.S. that can handle horses.³⁰ These organizations are only able to hold around 13,400 horses per year.³¹ This means that of the nearly 125,000 unwanted horses a year, only around ten percent of those horses can be handled and taken by a rescue organization.³² Rescue organizations are so overcrowded that they have no choice but to turn horses away for lack of resources to give them better care.³³ Animal shelters are not just in need of money—they need supplies, more space, and more people to help.³⁴

Another issue that has become prevalent with the large number of unwanted horses is the shipment of these horses to either Canada or Mexico. It goes without saying that the USDA only has jurisdiction within the borders of the United States. Once horses destined for slaughter in other countries have left the U.S., there is nothing the USDA can do to regulate how the horses are shipped, cared for before slaughter, or the manner in which they are slaughtered. The result of the international shipment of horses for slaughter is longer shipping distances, up to and beyond one thousand miles to Canada and Mexico in hot, crowded trailers.³⁵ Even with the efforts of both the USDA and the Animal and Plant Health Inspection Service (APHIS) to keep track of how these horses are

27. *Id.*

28. Rosenthal, *supra* note 13.

29. Wilde, *supra* note 11.

30. Rosenthal, *supra* note 13.

31. *Id.*

32. *See id.*

33. *See id.*

34. *E.g., Equine Rescue League Looks for Help as More Rescues Are Made*, WTKR-TV3 (Mar. 1, 2011), <http://elizabethcity.wtkr.com/news/news/equine-rescue-league-looks-help-more-rescues-are-made/50124>.

35. Wilde, *supra* note 11.

shipped within the U.S., many violations still happen. The most difficult part of enforcing the APHIS regulations is that they are vague. The definition of a horse for slaughter “only applies to those equines being transported directly to slaughtering facilities.”³⁶ People who are shipping horses for slaughter in foreign slaughterhouses are finding ways around complying with APHIS transport requirements by shipping horses to a domestic point near either the Canadian or Mexican border, and then taking a short trip to the border as a horse that is destined for slaughter.³⁷ Not only are horses for slaughter being transported longer distances, but during the transport process, they are being transported in a manner that is inhumane for such a large animal.³⁸ Border compliance officers do little to nothing to help the situation because they are not collecting the necessary certificates when a horse for slaughter is transported across international lines.³⁹ Another method shippers are using to get around the APHIS requirements are by designating a horse as a “feeder horse.” A feeder horse is a horse sent to either “a Canadian or Mexican feedlot for fattening before subsequently being sent to a slaughtering facility in that country.”⁴⁰ These horses can legally be sent across the border but fly under the radar of these agencies because they have not been designated as a horse for slaughter. It is apparent that even though the USDA has had the greatest effect on the termination of horse slaughter in the U.S., trying to maintain humane methods of transport for horses ultimately destined for slaughter has been nearly impossible.

Another choice people have turned to is abandoning their horses to the wild. The increase of abandoned horses in the past several years has had negative impacts on wild horse populations. Abandoned horses are spreading disease through wild horse populations, as well as destroying the land wild horses occupy.⁴¹ The Bureau of Land Management is charged with the power to oversee and maintain healthy wild horse populations. The increase of abandoned horses has put pressure on the resources that both wild horses and newly abandoned horses must rely on.⁴² The number of horses on tribal lands has increased to over 30,000 horses, which has resulted in extreme destruction of the land by over-grazing.⁴³

36. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 28 (2011), available at <http://www.gao.gov/assets/320/319926.pdf>.

37. *Id.* at 27-28.

38. *Id.* at 28 (e.g., horses are transported in double-deck trailers that are typically meant for smaller animals like pigs).

39. *See id.* at 30.

40. *Id.* at 12.

41. *Id.* at 22.

42. *Id.* at 24.

43. *Id.* at 22.

Domesticated horses that are abandoned do not have the necessary natural instincts to survive in the wild—they do not know how to find food to eat, nor do they know what plants they can eat.⁴⁴ They also do not know how to protect themselves from other animals, including wild horses that oftentimes attack abandoned horses.⁴⁵ Ultimately, an abandoned horse does not have a good prospect of survival in the wild.

Because of the number of issues that have arisen around unwanted horses, county and city governments have had to decide what actions to take and determine how they will handle the influx of unwanted horses.⁴⁶ Generally, the responsibility of handling abandoned or neglected horses falls upon smaller governmental bodies.⁴⁷ They are dealing not just with neglected horses, but also with abandoned horses, wild horses, and house pets, such as cats and dogs, within their jurisdiction.⁴⁸ Just like most of the country, county and city governments are short on money, and trying to feed and care for abandoned horses puts a great deal of pressure on local budgets.⁴⁹ It is simpler for the jurisdictions to do nothing rather than to incur the cost of feeding, housing, caring for, finding new homes for, and disposing of such large animals.⁵⁰ Each unwanted horse costs local taxpayers \$3,600 per year.⁵¹ In addition to just supplying the basic necessities for a horse, small government entities also have to supply facilities and appropriately trained personnel.⁵² Unfortunately, the response for local governments is oftentimes no action rather than taking in the abandoned and neglected horses. From the numbers, it is clear that ending horse slaughter in this country has not ended horse slaughter for American horses, nor has it increased the humane treatment of horses.

44. *Id.*

45. *Id.*

46. JAMES J. AHERN ET AL., ANIMAL WELFARE COUNCIL, INC., THE UNINTENDED CONSEQUENCES OF A BAN ON THE HUMANE SLAUGHTER (PROCESSING) OF HORSES IN THE UNITED STATES 4 (2006), available at http://www.animalwelfarecouncil.com/wp-content/uploads/2013/04/AWC_UnintendedConsequences_51.16.06.pdf.

47. GOV'T ACCOUNTABILITY OFFICE, *supra* note 36, at 18.

48. AHERN ET AL., *supra* note 46, at 4.

49. Ryan Holeywell, *Why Are Local Leaders Advocating for Horse Slaughter?*, GOVERNING THE STATES AND LOCALITIES (July 21, 2011), <http://www.governing.com/blogs/fedwatch/Why-are-local-leaders-advocating-for-horse-slaughter.html>.

50. Peggy Vlereborne, *Horses Owners Need to Pony Up to Responsibilities*, MADISON COURIER, Dec. 18, 2007, <http://madisoncourier.com/main.asp?TypeID=1&ArticleID=40551&SectionID=4&SubSectionIS=253&Page=1>; Holeywell, *supra* note 49.

51. Holeywell, *supra* note 49.

52. AHERN ET AL., *supra* note 46, at 4.

III. A HORSE OWNER'S RESPONSIBILITY AND STATE LAWS

There are many different facets of owning any animal, the least of which is an owner's responsibility toward the care of that animal, including horses. This not only encompasses the day-to-day care of the horse, but also what an owner can do with their horse when they can no longer care for it. Horse owners are resorting to inhumane choices to relieve themselves of the responsibility of taking proper care of their horses. For many horse owners, it is too expensive for them to do what is right when it comes to either disposing of their horses or maintaining the proper level of care. These choices have consequences and illustrate the need for different alternatives for horse owners to properly end their duty to care for their equine companions.

A. Abandonment

With abandonment of horses on the rise in the United States, it is causing problems for more than just the horses thrown out into the wild. In looking at various state statutes, there are several ways in which states deal with abandoned horses. These approaches vary from highly specific to much broader and more encompassing for what qualifies as an abandoned animal. A more specific and detailed approach defines an animal as being abandoned if they are left with a veterinarian or kennel longer than was agreed upon by the owner and the veterinarian.⁵³ The state of Iowa is one of these states, providing: if "any animal is left with a veterinarian, boarding kennel[,] or commercial kennel pursuant to a written agreement and the owner does not claim the animal by the agreed date, the animal shall be deemed abandoned."⁵⁴ Other states, such as Kentucky, include both a specific and a more general definition.⁵⁵ Along with leaving an animal at a care facility longer than agreed to, the more general section of Kentucky's provision states, "[a]bandonment . . . constitute[s] the relinquishment of all rights and claims by the owner to the animal."⁵⁶ Alabama, by far, has one of the broadest definitions of abandonment, defining it as: "forsak[ing] entirely, to neglect, or refuse to provide or perform the legal obligations for care and support of an animal by its owner."⁵⁷ While states have chosen different ways to define what an abandoned animal is, it is clear that if someone has given up rights to an animal

53. See, e.g., LA. REV. STAT. ANN. § 3:2452 (2011); OKLA. STAT. ANN. tit. 59, § 698.16 (2010).

54. IOWA CODE ANN. § 162.19 (West 2011).

55. See KY. REV. STAT. ANN. § 257.100 (West Supp. 2012).

56. *Id.*

57. ALA. CODE § 34-29-86 (2010).

in their ownership, the law no longer sees the animal in their possession; whether it be by leaving it at the vet or releasing it to the wild.

While these statutes are not equine specific, there is no indication that equine animals are excluded from these statutes. However, two states, Louisiana and California, have enacted statutes that deal directly with the abandonment of horses and owner responsibility. Louisiana's Administrative Code delegates specific authority to the Louisiana State Livestock Sanitary Board⁵⁸ to declare any abandoned equine when it has no apparent owner.⁵⁹ California's statute goes beyond merely describing what an abandoned horse is, and details who is responsible for an abandoned horse.⁶⁰ The duty to care for animals that have been abandoned or voluntarily relinquished falls upon "an officer of a pound, humane society, or animal regulation department of a public agency."⁶¹ It should be noted that this California statute does not provide for the destruction of an abandoned equine; rather, it has express provisions for how to handle the sale or adoption of an abandoned horse.⁶² While not an aspect of California's statute, many other states allow for the destruction of an abandoned animal after a certain time period has passed.⁶³

Once a party other than the owner of an animal has taken over the ownership responsibilities of an abandoned animal, many states provide guidelines for the new owners. Just as states took several different approaches in defining an abandoned animal, there are also different methods regulating the care of abandoned animals. Some states allow for the humane disposal of the animal, while other states allow the animal to be sold and use the proceeds to cover the costs of caring for the abandoned animal.⁶⁴

In addition to what rescuers may do with an abandoned animal, many states also impose a waiting period before the animal can be deemed abandoned. States such as Indiana, Kansas, and Louisiana all require notice to be given to the owner of the animal before its status as abandoned is declared.⁶⁵ The time period varies widely from state to state. Indiana only requires five days after written notice has been given before the animal will be declared abandoned.⁶⁶ Kansas and Louisiana have a longer period, allowing ten days after notice has been sent

58. LA. ADMIN. CODE tit. 7, pt. XXI, § 511 (2011).

59. LA. ADMIN. CODE tit. 7, pt. XXI, § 525(A)(6) (2011).

60. CAL. PENAL CODE § 597.2 (West 2010).

61. *Id.*

62. *Id.*

63. *E.g.*, IND. CODE ANN. § 25-38.1-4-8 (West Supp. 2007); IOWA CODE ANN. § 162.19 (West 2011); KAN. STAT. ANN. § 47-835 (West 2000).

64. *E.g.*, § 25-38.1-4-8; VT. STAT. ANN. tit. 20, § 3513 (West 2011).

65. § 25-38.1-4-8; § 47-835; LA. REV. STAT. ANN. § 3:2452 (2011).

66. § 25-38.1-4-8.

to the owner's house and ten days after the invoice has been sent to the owner, respectively.⁶⁷ Louisiana's equine abandonment statute allows more leeway and gives an owner an extra five days, giving them a total fifteen days after "the last publication seeking the owner was made" to claim their equine.⁶⁸ Finally, after the statutory time frame has passed, notice must be given to the owner through various different means depending on what the state requires.⁶⁹

Once the animals are declared abandoned, those who have custody of abandoned animals generally have two choices on how to proceed depending on the state in which they live. Kentucky allows any "peace officer, animal control officer, or any person authorized by the [Board of Agriculture]" to end the life of an animal that is abandoned and neglected, injured, or diseased.⁷⁰ Some states, like California, do not allow a perfectly healthy animal to be slaughtered, and instead instruct those in the custody of an abandoned animal to sell the animal or put it up for adoption.⁷¹ Laws such as this only continue to put pressure on local resources and add to the number of unwanted horses that need to be cared for in the U.S.

Many of these state statutes set out who is responsible for an animal once it has been declared abandoned rather than what the penalty is on the owner. Unfortunately, the owner seems to get out of the responsibility for an abandoned animal fairly easily. States do not place much, if any, responsibility on the owner. The state of Washington is an example of just this—its statute tells a person who has custody of an abandoned animal to contact the local pound, humane society, or the county sheriff, not the owner of the animal.⁷² The only way an owner will be implicated with some sort of liability for abandoning their animal is if they are neglecting or abusing their horse. It seems there is more of an implied expectation in the case of abandonment that people want their pets back and will come to retrieve them if they are notified. Many states simply direct people on what to do when they find an abandoned animal, rather than trying to hold the owner responsible for what they did. Indiana even goes so far as to make the person who brings in the abandoned animal "liable for all reasonable and customary expenses incurred for diagnosis, treatment, hospitalization, surgery, board, euthanasia, and disposal of the abandoned animal."⁷³ Laws like this do not

67. § 47-835; § 3:2452.

68. LA. ADMIN. CODE tit. 7, pt. XXI, § 525(A)(6) (2011).

69. § 47-835; § 3:2452.

70. KY. REV. STAT. ANN. § 257.100(1) (West 2011).

71. CAL. PENAL CODE § 597.2 (West 2010).

72. WASH. REV. CODE ANN. § 16.54.020 (West Supp. 2012).

73. IND. CODE ANN. § 25-38.1-4-8 (West Supp. 2007).

encourage responsible ownership of animals and they may even discourage a Good Samaritan from getting an animal the help it needs.

B. Neglect

Neglect is another all too often alternative to abandonment when people can no longer afford to care for their horses. A responsible horse owner needs to supply proper feed, shelter, and veterinary care.⁷⁴ To properly feed a horse means to provide the animal with a well-balanced diet and access to fresh water.⁷⁵ Along with five to ten gallons of water and fifteen to twenty pounds of food each day, horses also need access to various minerals, including salt.⁷⁶ While horses can generally withstand a variety of weather, they still need to be given some form of shelter from the elements that will not only provide them with protection, but also adequate space to shelter the number of horses in a paddock.⁷⁷ When horses are kept inside, they must be provided with at least a twelve-foot by twelve-foot stall, with a ceiling that does not touch their ears.⁷⁸ The horse stalls need to be kept clean, hazard free, and receive plenty of air circulation.⁷⁹ Finally, every horse should have regular visits to the veterinarian and to a farrier.⁸⁰ This is not only a large time commitment, but also a large financial commitment to ensure the horse is properly cared for.

Where states have been more lenient on assigning owner responsibility after abandonment, they have also recognized the greater danger in allowing people to go unpunished for neglecting their animals. Reporting systems, similar to child abuse reporting systems, have been a way to discourage animal abuse in several states.⁸¹ A Louisiana statute requires mandatory reporters for child abuse to also act as mandatory reporters for instances of animal neglect.⁸² Neglect can be defined as a broad array of acts ranging from failing to ensure the animal re-

74. UNWANTED HORSE COAL. *supra* note 12, at 3-5.

75. *Id.* at 3.

76. Ky. Equine Research, *How Much Water Does My Horse Need?*, EQUINEWS (Nov. 28, 2011), <http://www.equinews.com/article/how-much-water-does-my-horse-need>; *The Rules of Feeding Your Horse*, HUMANE SOCIETY (March 28, 2011), http://www.humanesociety.org/animals/horses/tips/rules_horse_feeding.html; *Salt for Horses*, WOW HORSES (2009), <http://www.wowhorses.com/salt.html>.

77. UNWANTED HORSE COAL., *supra* note 12, at 4.

78. *Id.*

79. *Id.*

80. *Id.*

81. *See, e.g.*, LA. REV. STAT. ANN. § 14:403.6 (2004); TENN. CODE ANN. § 38-1-403 (West 2010).

82. § 14:403.6.

ceives proper care to intentionally causing injury to an animal.⁸³ Neglect typically requires either serious actions or lack of action on the part of a horse owner, not a mere oversight.

States do not take the penalties for neglecting an animal lightly nor is the abuse ignored. The punishment is at least a misdemeanor (of varying seriousness) in just about every state.⁸⁴ The punishments vary based on each individual state's code, but fines of up to \$1,000, reasonable costs and necessary expenses for care after a neglected animal has been confiscated, and imprisonment up to 180 days are all common remedies for neglect of an animal.⁸⁵ For more serious situations and repeat offenses, neglect can even be a felony.⁸⁶ In states where animal neglect or abuse is a felony, the punishments can range from \$1,000 and six months in prison, to \$125,000 and five years in prison.⁸⁷ In this respect, states have taken a stronger approach in dealing with owners who neglect their animals than those who abandon their horses.

C. Euthanasia

Horse owners also have the option of euthanizing their horses as a method of disposal. Euthanasia is the combination of two Greek words meaning "good death."⁸⁸ According to the American Association of Equine Practitioners, when deciding to euthanize a horse, the owner and veterinarian should look at medical considerations and the future life of the horse.⁸⁹ The AVMA has set forward three humane ways of euthanizing an animal: chemical euthanasia, gunshot, and penetrating captive bolt.⁹⁰ The cost of chemical euthanasia varies—but generally costs between \$50–\$150,⁹¹ and the cost of the alternative methods are minimal if the necessary equipment is readily available. While this in and of

83. *E.g.*, D.C. CODE § 22-1011 (2010); IOWA CODE ANN. § 717B.3 (West 2011).

84. *E.g.*, IOWA CODE ANN. § 717B.3(3) (West 2011); MO. ANN. STAT. § 578.009(3) (West 2003); OR. REV. STAT. ANN. § 167.325 (West 2003).

85. *E.g.*, D.C. CODE § 22-1001 (2010); FLA. STAT. ANN. § 775.083(d)–(e) (West Supp. 2012); § 578.009(3).

86. MO. ANN. STAT. § 578.012 (2012); OR. REV. STAT. ANN. § 167.320 (2012); W. VA. CODE, § 61-8-19 (2012).

87. MO. ANN. STAT. § 558.011 (2012); OR. REV. STAT. ANN. § 161.605 (2012); OR. REV. STAT. ANN. § 161.625 (2012); W. VA. CODE ANN., § 61-8-19(b) (2012).

88. UNWANTED HORSE COAL., *supra* note 12, at 21.

89. *Euthanasia Guidelines (2011)*, AM. ASS'N OF EQUINE PRAC. (2011), http://www.aaep.org/euthanasia_guidelines.htm.

90. *Unwanted Horses and Horse Slaughter (FAQ)*, AM. VETERINARY MED. ASS'N (Feb. 1, 2012), <https://www.avma.org/KB/Resources/FAQs/Pages/Frequently-asked-questions-about-unwanted-horses-and-horse-slaughter.aspx>.

91. UNWANTED HORSE COAL., *supra* note 12, at 22.

itself is not an overwhelmingly large amount of money, there is a much larger cost to dispose of the carcass.

Disposing of at least a thousand pounds of an animal is no small feat. Many states have enacted statutes that control where, how, and when an animal carcass is to be disposed. In general, there are four different options for disposing of a horse carcass: burial, landfills, incineration/cremation, or rendering.⁹² The cost of disposal depends on the method, the area of the country, and the cost of necessary materials.⁹³ Bringing the horse carcass to a landfill is one of the cheapest options with prices ranging from \$80 to \$150; however, not all landfills accept animal carcasses.⁹⁴ There are a great deal of environmental and health concerns in disposing of an animal by bringing it to a landfill because of the negative impacts that a dead carcass can have on its surroundings, especially one as large as a horse carcass.⁹⁵ Even if a landfill does accept animal carcasses, horses may not be on the approved list of animals, and if they are, there may be a cost associated with the disposal.⁹⁶ A rendering plant can be another cost-effective alternative with prices ranging between \$75 and \$200.⁹⁷ The only problem with this alternative is that only half of states have rendering plants, with most concentrated in the Midwest.⁹⁸ While rendering and bringing a carcass to a landfill seem like cost-effective alternatives, they are limited in accessibility to horse owners across the country.

The final two options are burial and incineration, neither of which is cheap. A burial can cost between \$250 and \$500, while incineration is the most expensive option, costing between \$600 and \$2,000 depending on the cost of fuel at the time and the cost to comply with air pollution regulations.⁹⁹ In addition to the cost of having a horse buried, there are even more statutes and restrictions associated with animal burials; so even if someone is willing to bury the animal on their own to help cut costs, they must take the time to investigate what is allowed in the area. A general requirement that most states have enacted is to put a limit on the length of time from the death of the animal to when the carcass is disposed. Indiana's animal disposal statute requires that an animal carcass be disposed of within twenty-four hours of death, while Iowa take a more expansive

92. *Id.* at 22–23.

93. *Id.*

94. *Id.* at 23.

95. *See id.* at 22–23; *see also* AHERN ET AL., *supra* note 46, at 8.

96. UNWANTED HORSE COAL. *supra* note 12, at 23.

97. *Id.*

98. *Id.*

99. *Id.*; AHERN ET AL., *supra* note 46, at 8.

view and simply requires that the carcass be “disposed of within a reasonable time after death.”¹⁰⁰

The restrictions are not only limited by time; there are also restrictions on the location of an animal burial. To prevent contamination of nearby water supplies, states have enacted location requirements for the disposal of animal carcasses. Indiana simply requires that an animal’s body be “at least four (4) feet below the natural surface of the ground and every part of the animal’s body [be] covered with at least four (4) feet of earth”¹⁰¹ Pennsylvania’s Department of Agriculture requires the burial be in accordance with regulations governing water quality to prevent the spread of disease and hazardous materials.¹⁰² Horses in the state of Louisiana must be buried at six feet, which is not only two feet deeper than the required depth in Indiana, but also two feet deeper than smaller sized livestock such as goats, pigs, and sheep.¹⁰³ This is not to say regulations are unnecessary, simply that they illustrate another reason why horse owners need a simpler and more cost-effective alternative for the disposal of their pets.

Receiving a fine for violating disposal statutes is not uncommon, as they can lead to health and safety issues in the community. Kentucky imposes a fine between \$10 and \$500 for improperly disposing of a dead animal.¹⁰⁴ While this statute only fines once per violation, Kansas has a harsher penalty and will continue to fine a violator for every twenty-four hours of failure to comply with proper disposal.¹⁰⁵ In some states, such as the state of Washington, improperly disposing of an animal carcass is a misdemeanor.¹⁰⁶ Florida combines both approaches and makes violation a misdemeanor punishable by \$500.¹⁰⁷ Pet owners not only have a responsibility to end the life of an animal that is suffering, but they also have the responsibility to see to it that the carcass is disposed of in a sanitary manner after the life of their pet has ended.

IV. HISTORY OF HORSE SLAUGHTER AND HORSEMEAT IN AMERICA

Animals have been killed for a variety of reasons all around the world for centuries. Killing animals for food, however, is limited to what is socially acceptable in a given culture and time period. There is a much more extensive his-

100. IND. CODE ANN. § 15-17-11-20(a) (West 2008); IOWA CODE ANN. § 167.18 (West 2011).

101. § 15-17-11-20(a)(2).

102. 3 PA. CONS. STAT. ANN. § 2352(a)(4)(i) (West 2008).

103. § 15-17-11-20(a)(2); LA. REV. STAT. ANN. § 3:2131 (2011).

104. KY. REV. STAT. ANN. § 263.990 (West 2005).

105. KAN. STAT. ANN. § 47-1219(b) (West 2000).

106. WASH. REV. CODE ANN. § 16.68.180 (West 2006).

107. FLA. STAT. ANN. §§ 775.083(1)(e), 823.041(3) (West 2006).

tory on the slaughter and human consumption of horsemeat overseas than there is in the United States.¹⁰⁸ In Europe and Asia, horsemeat is a delicacy; today, however, it is not socially acceptable to eat it in the U.S.¹⁰⁹ This is not to say the United States does not have its own rather surprising history of horsemeat consumption, particularly when the cost of traditional sources of meat has skyrocketed.¹¹⁰

As with many things, Americans' position on consuming horsemeat ebbs and flows with the times. It may be a surprise to learn that the consumption of horsemeat is one such area where the position of Americans has changed over time depending on the circumstances in the country. Even though eating horsemeat is currently anathema in our society, there have been times when Americans have consumed horsemeat.

When beef, pork, or poultry prices have skyrocketed, or there has been a shortage of these kinds of meats throughout history, Americans have turned to horsemeat as a cheaper, more available alternative.¹¹¹ In 1915, the Board of Health in New York City encouraged people to buy and eat horsemeat during World War I.¹¹² The city's committee on food supply even sent out pamphlets with schoolchildren to take home to parents on how to buy horsemeat.¹¹³ While there was no official endorsement, city officials made it clear that there was no harm in consuming horsemeat.¹¹⁴ The reason behind such encouragement was twofold: first, because horsemeat was not in high demand, the price was less expensive.¹¹⁵ Second, and more importantly, during World War I there was great concern that there would be a meat shortage.¹¹⁶ Encouraging people to eat horsemeat was an effort to help lessen the effects of a possible meat shortage.

Thirty years later, just after the end of World War II, the *New York Times* again reported that Americans had returned to eating horsemeat.¹¹⁷ In 1946, horsemeat sales were on the rise in New York City and there was no indi-

108. Christa Weil, Op-Ed., *We Eat Horses, Don't We?*, N.Y. TIMES, Mar. 5, 2007, http://www.nytimes.com/2007/03/05/opinion/05weil.html?_r=0.

109. David Hunter, *Horse Meat's a Delicacy Elsewhere*, KNOXVILLE NEWS SENTINEL, Dec. 6, 2011, <http://www.knoxnews.com/news/2011/dec/06/david-hunter-horse-meats-a-delicacy-elsewhere/>.

110. Weil, *supra* note 108.

111. *Id.*

112. *Allow Horse Meat for Food in City*, N.Y. TIMES, Dec. 22, 1915, at 5.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Charles Grutzner, *Horse Meat Consumption by New Yorkers Is Rising; Newark Dealer Reports 60% of Customers Are from City—Weinstein Will Not Prohibit Sale of the Flesh Here*, N.Y. TIMES, Sept. 25, 1946, at 1.

cation that the sale of horsemeat would be prohibited.¹¹⁸ Westchester County in New York ran low on meat for both the hospital and the prison.¹¹⁹ Officials had to find alternative sources of meat and the choice was horsemeat.¹²⁰ Again in the 1970s, during the economic recession of the Nixon era, Americans added horsemeat to their diet.¹²¹ Recently, there has been another movement encouraging the consumption of horsemeat in the United States. Eating horsemeat is a trend “that seems to be gaining momentum.”¹²² Not only would bringing back horse slaughter restore a sixty-five million dollar industry, but it would also provide an inexpensive protein alternative for poorer Americans.¹²³

Horsemeat has not just been an alternative during difficult times in America’s past—it has also been served at elite dining locations as a delicacy. The Harvard Faculty Club served horsemeat until 1985.¹²⁴ The only reason horsemeat made its exit from the faculty club’s menu is because the new chef absolutely would not cook frozen food, which is typically how horsemeat was sold.¹²⁵ Otherwise, who knows how long horsemeat would have stayed on the menu as a delicacy.¹²⁶ A more recent attempt to revive horsemeat as a delicacy was by Chef Gordon Ramsay. He began serving horsemeat in his restaurants around the world as a more delicate and healthier alternative to beef.¹²⁷ Horsemeat continues to be a delicacy overseas, has been in the past in the United States, and may soon be a more popular choice here.

To make the market for horsemeat possible, slaughter facilities were opened just for horses. Large-scale horse slaughter facilities were first opened in the United States in the 1970s.¹²⁸ For the next twenty years, the industry boomed

118. *Id.*

119. James E. Powers, *Near-by Hospitals Down to Minimum of Meat Supplies*, N.Y. TIMES, Sept. 29, 1946, at 1.

120. *Id.*

121. David Beriss, *How Americans Think: About Horsemeat, For Example*, FOODANTHROPOLOGY (Dec. 6, 2011, 7:45 PM), <http://foodanthro.com/2011/12/06/how-americans-think-about-horsemeat-for-example/>.

122. David Magee, *Want a Bite of Horse Meat? Concept Gains Momentum*, INT’L BUS. TIMES, Dec. 29, 2011, <http://www.ibtimes.com/want-bite-horse-meat-concept-gains-momentum-213147>.

123. *Id.*; Josh Ozersky, *The Case for Eating Horse Meat*, TIME IDEAS, Dec. 28, 2011, <http://ideas.time.com/2011/12/28/the-case-for-eating-horse-meat/?xid=gonewsedit>.

124. Christopher Moraff, *What’s Wrong with Eating Horse Meat?: 5 Fun Facts About the ‘Other Red Meat,’* THE PHILLY POST (Feb. 21, 2013), http://blogs.phillymag.com/the_philly_post/2013/02/21/eat-horse-meat-ok-wrong/.

125. *Id.*

126. *See id.*

127. Hunter, *supra* note 109.

128. *Horse Slaughter*, EQUINE ADVOCATES, <http://www.equineadvocates.org/issueDetail.php?recordID=2> (last visited July 31, 2013).

from just a few slaughterhouses to at least sixteen being operated in the 1990s.¹²⁹ By 2006, however, the number of horse slaughter facilities had dwindled to just three, with two located in Texas, both of which opened in the 1970s, and one located in Illinois.¹³⁰ Dallas Crown, located in Kaufman, Texas, has been open since the late 1970s, and Beltex started operation in Dallas in 1977.¹³¹ DeKalb, Illinois was the home of Cavel International, which re-opened their doors in 2004 after a fire destroyed the facility in which they had been operating.¹³² In 2007, both Illinois and Texas put an end to horse slaughter in America by declaring the slaughter of horses for human consumption illegal.¹³³

V. LAWS AFFECTING HORSE SLAUGHTER

A. *Federal Law and Administrative Action*

Slaughter, for human consumption and other uses, is subjected to many regulations in the U.S. Horse slaughter is not just regulated at the federal level: state and local governments are taking action as well. At the federal level, Congress can enact legislation regulating the equine industry. Administratively, the USDA regulates all aspects of slaughtering animals, including members of the equine family, through APHIS,¹³⁴ and the USDA also monitors the shipment of animals.¹³⁵ The USDA's authority includes regulating the methods of slaughter, transportation of animals to slaughterhouses, packaging of meat, and the treatment of animals awaiting slaughter.¹³⁶

Several attempts, in various forms, to end horse slaughter have been brought before Congress. One attempt began in 2002 as a proposal for an outright ban on horse slaughter.¹³⁷ The bill, titled the American Horse Slaughter Prevention Act, was introduced on February 14, 2002.¹³⁸ The bill was drafted

129. *Id.*

130. JANE ALLIN, INT'L FUND FOR HORSES, WHEN HORSE SLAUGHTER COMES TO TOWN 3 (2011), available at http://www.horsefund.org/resources/When_Horse_Slaughter_Comes_To_Town_28March12.pdf.

131. *Id.*

132. *Id.* at 4; Cavel Int'l, Inc. v. Madigan, 500 F.3d 544, 545 (7th Cir.), appeal dismissed by and injunction denied by, 500 F.3d 551 (7th Cir. 2007).

133. Empacadora de Carnes de Fresnillo v. Curry, 476 F.3d 326, 329 (5th Cir. 2007); Cavel Int'l, 500 F.3d at 545-46.

134. See Commercial Transportation of Equines for Slaughter, 9 C.F.R. § 88.4 (2011).

135. See *id.*

136. See *id.*

137. American Horse Slaughter Prevention Act, H.R. 3781, 107th Cong. (2002).

138. *Id.*

with the purpose of preventing cruelty to horses through the slaughter process.¹³⁹ The first time it was presented to Congress, the bill was not successful and was dismissed during the committee process.¹⁴⁰ This, however, was not the end of the bill—it was introduced a total of seven more times between House and Senate bills, but was no more successful than the first time it was brought before Congress.¹⁴¹ The most success this bill had was when it was introduced in September 2006.¹⁴² The 2006 version made it through committee and to a House vote on September 7, 2006 with a vote of 351-40, but did not make it to a vote in the Senate.¹⁴³

The most recent attempt to get federal legislation banning horse slaughter was introduced on June 9, 2011 to the Senate, and on September 19, 2011 by Representative Dan Burton to the House.¹⁴⁴ This attempt was not an outright ban on slaughter; rather, it was an amendment to the Federal Horse Protection Act.¹⁴⁵ Representative Burton wanted to amend the Horse Protection Act to “prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption.”¹⁴⁶ The effects of this amendment would cut at the heart of the business of horse slaughter rather than completely banning it—which is probably a more effective way to end horse slaughter. Currently, this proposed amendment is in committee.¹⁴⁷ It has been referred to the House Committee on Agriculture, Subcommittee on Livestock, Dairy, and Poultry, and the Senate Committee on Commerce, Science, and Transportation.¹⁴⁸ As of the beginning of the 113th congressional session, there has been no action on horse slaughter.

By far, the USDA has had the greatest effect at the federal level on the ability of horse slaughter to exist in the United States. As part of the Federal Meat Inspection Act, all facilities where animals are slaughtered for human food must have regular inspections.¹⁴⁹ This includes those facilities that slaughter horses for human consumption.¹⁵⁰ In 2005, as part of the fiscal year 2006 Agri-

139. See House, *supra* note 23.

140. H.R. 3781.

141. H.R. 2112, 112th Cong. (2011); H.R. 2966, 112th Cong. (2011); S. 1176, 112th Cong. (2011); H.R. Res. 981, 109th Cong. (2006); S. 1915, 109th Cong. (2005); S. 2352, 108th Cong. (2004); H.R. 857, 108th Cong. (2003).

142. H.R. Res. 981.

143. *Id.*

144. S. 1176; H.R. 2966.

145. H.R. 2966.

146. *Id.*

147. H.R. 2966; S. 1176.

148. H.R. 2966; S. 1176.

149. Federal Meat Inspection Act, 21 U.S.C. § 603(a) (2006).

150. *Id.*

culture Appropriations Act, Congress denied the use of federal funds for USDA inspections of horse slaughter facilities.¹⁵¹ This prohibition was renewed through the appropriations for 2011.¹⁵² The end of funding from the USDA for horse slaughter facility inspections essentially had the same effect as an outright horse slaughter ban. Having inspections is essential to the ability to operate any slaughter facility that plans to sell meat for human consumption, and was a rather underhanded way to end horse slaughter.¹⁵³ Initially, the USDA allowed horse slaughter facilities to pay for these inspections on their own; however, in 2007, a court ruling ordered the USDA to stop allowing these private inspections.¹⁵⁴ The effect of ending the availability of inspections was to end horse slaughter, even though it is still technically legal at the federal level. It is impossible for a facility to comply with the inspection requirements if it wishes to sell meat for human consumption, as there is no legal way to have an inspection of a facility.¹⁵⁵

A recent change in funding has now removed the ban on funding for horse slaughter facility inspections. With the Consolidated Appropriations Act of 2012, the prohibition on federal inspections for horse slaughter facilities was quietly taken out of the appropriations bill.¹⁵⁶ On November 18, 2011, President Obama signed into law the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, which lifted the ban on the use of federal funds for horse slaughter inspections.¹⁵⁷ As of this point, the USDA has not allocated money for the inspection of horse slaughter facilities, so the future of horse slaughter remains uncertain as federal inspections are still not possible.¹⁵⁸ Additionally, the USDA has not received any requests to reinstitute the inspection process for

151. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 109-97, § 794, 119 Stat. 2120 (2005).

152. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 111-80, § 744, 123 Stat. 2090 (2009); Omnibus Appropriations Act, Pub. L. No. 111-8, § 739, 123 Stat. 524 (2009); Consolidated Appropriations Act, Pub. L. No. 110-161, § 741, 121 Stat. 1844 (2007).

153. See 21 U.S.C. § 603(a); ALLIN, *supra* note 130, at 7.

154. *Humane Soc’y of the U.S. v. Johanns*, No. 06-265, 2007 WL 1120404, at *13-14 (D.D.C. 2007).

155. ALLIN, *supra* note 130, at 7.

156. Consolidated Appropriations Act, Pub. L. No. 112-74, 125 Stat. 786 (2011); Consolidated and Further Continuing Appropriations Act, Pub. L. No. 112-55, 125 Stat. 552 (2011).

157. H.R. 2112, 112th Cong. (2011) (enacted).

158. Sarah LeTrent, *Horse: Coming Soon to a Meat Case Near You?*, CNN EATOCRACY BLOG (Nov. 30, 2011, 3:00 PM), <http://eatocracy.cnn.com/2011/11/30/horse-coming-soon-to-a-meat-case-near-you/>.

horse slaughter facilities.¹⁵⁹ Beyond the federal inspections, there are still numerous health and safety requirements that must be met for a meat slaughtering facility to get off the ground—therefore, companies will need a great deal of time and planning before any horse slaughter facility could be legally operational in the United States again.¹⁶⁰

In order to ensure humane treatment of animals on their way to slaughter, the USDA has enacted regulations on the transport of horses. The USDA, through APHIS, monitors the transportation of horses for slaughter, whether they will be slaughtered in the U.S. or outside the country.¹⁶¹ These transportation standards set forward the “minimum care standards to protect horse welfare, but [] appl[y] only when the horses are being moved directly to slaughtering facilities.”¹⁶² This means the regulation only applies to horses being transported for slaughter.¹⁶³ A horse must have an accompanying certificate turned in when the horse crosses the border if a horse has been designated “for slaughter.”¹⁶⁴ The general requirements under APHIS for the shipping of horses for slaughter are:

Separate stallions and aggressive horses from the rest of the shipment; [p]rovide adequate food, water, and rest six (6) hours prior to loading onto a vehicle; [c]onfine horses in a vehicle no longer than [twenty-eight] hours without food and water; [u]se an owner/shipper certificate, [p]rovide adequate floor space; [and] [p]hase out two-tier trailers.¹⁶⁵

In addition to these basic requirements for shipping, APHIS also puts limits on the type of horses that can be shipped for slaughter. Any one of five conditions will make a horse ineligible to be shipped for slaughter: the horse (1) cannot bear weight on all four legs, (2) needs assistance to walk, (3) is blind, (4) is less than six months old, or (5) is likely to give birth during the shipping process.¹⁶⁶ To encourage compliance with these regulations, APHIS does have the

159. Phil Derfler, *Setting the Record Straight on Congress' Lifting of the Ban on Horse Slaughter*, USDA BLOG (Dec. 9, 2011, 3:20 PM), <http://blogs.usda.gov/2011/12/09/setting-the-record-straight-on-congress'-lifting-of-the-ban-on-horse-slaughter/>.

160. *See id.*

161. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 36, at 27.

162. *Id.*

163. *Id.*

164. *Id.*

165. Commercial Transportation of Equines for Slaughter, 9 C.F.R. §§ 88.3, 88.4 (2011); OFFICE OF INSPECTOR GEN., USDA, AUDIT REP. 33601-2-KC, ANIMAL AND PLANT HEALTH INSPECTION SERVICE ADMINISTRATION OF THE HORSE PROTECTION PROGRAM AND THE SLAUGHTER HORSE TRANSPORT PROGRAM 26 (2010) [hereinafter USDA], *available at* <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>; Animal & Plant Health Inspection Serv., *Animal Health: Slaughter Horse Transport Program (SHTP)*, USDA [hereinafter APHIS], http://www.aphis.usda.gov/animal_health/animal_dis_spec/horses/horse_transport.shtml (last modified Oct. 14, 2011).

166. 9 C.F.R. § 88.4 (2011); USDA, *supra* note 165, at 26; APHIS, *supra* note 165.

power to prosecute violations and assess fines.¹⁶⁷ Fines for violations of the APHIS requirements can be as much as \$5,000 per horse, per violation.¹⁶⁸ As of October 2011, there had already been thirty-two cases adjudicated or settled, with a total of \$912,000 assessed in fines.¹⁶⁹ While it seems that there are adequate protections put in place to protect horses from inhumane treatment, APHIS has little power other than assessing fines.¹⁷⁰ Horse shippers are able to continue shipping horses even if they have unpaid fines leveled against them, which gives shippers little incentive to actually pay the fines.¹⁷¹ This inability to enforce the payment of fines weakens the ability of APHIS to have a meaningful effect on conditions for horses being shipped for slaughter.

B. State Laws Affecting Horse Slaughter

The horse slaughter debate is not limited to issues at the federal level; many states have enacted controversial decisions that implicate the horse slaughter industry. These states include Illinois, Texas, and Montana, among others. State legislatures have enacted rules and regulations that fall on both sides of the horse slaughter debate, which has sparked even more discussion over the proper course to ensure the most humane treatment possible for horses.

Well before the legislatures and courts in Illinois and Texas banned horse slaughter, California had taken affirmative steps to keep horse slaughter out of the state. In 1998, the voters of California had the chance to vote on the Prohibition of Horse Slaughter and Sale of Horse Meat for Human Consumption Act of 1998.¹⁷² The act prohibited two things: “the sale of horsemeat . . . for human consumption in the State of California” and the slaughter of horses in California for human consumption.¹⁷³ On November 3, 1998, this initiative measure passed.¹⁷⁴ More recently, the state of California has formally adopted this initiative as part of the state code.¹⁷⁵ This statute makes it illegal and a criminally punishable felony for:

“any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that

167. USDA, *supra* note 165, at 8; *see also* APHIS, *supra* note 165.

168. Commercial Transportation of Equines for Slaughter, 9 C.F.R. § 88.6 (2011); USDA, *supra* note 165, at 8.

169. APHIS, *supra* note 165.

170. USDA, *supra* note 165, at 26.

171. *Id.* at 27.

172. 1998 Cal. Legis. Serv. Prop. 6 (West).

173. *Id.*

174. *Id.*

175. CAL. PENAL CODE § 598(c) (West Supp. 2013).

horse, if that person knows or should have known that any part of that horse will be used for human consumption.”¹⁷⁶

Once the state of California banned horse slaughter, it was only a matter of time before other states joined the movement because of the large impact California can have nationwide.

Illinois and Texas were the homes of the only three remaining horse slaughterhouses in the United States from the 1990s until 2007 and, because of that, they were also the states where horse slaughter bans had the largest impact.¹⁷⁷ Legislation in both states effectively shut down all three of these facilities.¹⁷⁸ The laws passed by Illinois and Texas did not directly state that horse slaughter was no longer legal; instead, the legislation cut at the heart of the slaughterhouses’ primary source of income, international sales, by banning the slaughter of horses for human consumption.¹⁷⁹ Horse slaughter facilities, such as the two in Texas—Dallas Crown and Beltex—derived most of their income from selling horsemeat to markets for human consumption in Europe and Asia.¹⁸⁰ Cavel International, which operated in Illinois, devoted more than ninety-nine percent of its business to supplying overseas markets with horsemeat for human consumption.¹⁸¹ Texas took action against horse slaughter for human consumption in 2005; Illinois followed suit in 2007.¹⁸² The Texas statute made it an offense to “sell, offer[] for sale, or exhibit[] for sale horsemeat as food for human consumption; or . . . possess[] horsemeat with the intent to sell the horsemeat as food for human consumption.”¹⁸³ In Illinois, the legislature adopted a statute very similar to Texas’ statute making it illegal to slaughter horses for human consumption and “unlawful for any person to possess, to import into or export from this State [*sic*], or to sell, buy, give away, hold, or accept any horse meat [*sic*] if that person knows or should know that the horse meat [*sic*] will be used for human consumption.”¹⁸⁴ It is clear from these two statutes that it is not illegal to

176. *Id.*

177. *See* Cavel Int’l, Inc. v. Madigan, 500 F.3d 544 (7th Cir.), *appeal dismissed and injunction denied*, 500 F.3d 551 (7th Cir. 2007); *Empacadora de Carnes de Fresnillo v. Curry*, 476 F.3d 326 (5th Cir. 2007).

178. 225 ILL. COMP. STAT. ANN. 635/1.5 (West 2011); TEX. AGRIC. CODE ANN. § 149.003 (West 2004).

179. 635/1.5; § 149.003.

180. Mabrey, *supra* note 1.

181. Cavel Int’l, 500 F.3d at 546.

182. *Id.* at 544; *Empacadora de Carnes de Fresnillo v. Curry*, No. 4:02-CV-804-Y, 2005 U.S. Dist. LEXIS 18261 (N.D. Tex. Aug. 25, 2005), *vacated and remanded*, 476 F.3d 326 (5th Cir. 2007).

183. TEX. AGRIC. CODE ANN. § 149.002 (West 2011).

184. 635/1.5.

operate a horse slaughter facility in these states; a facility may still slaughter horses if the horsemeat will be used for purposes other than human consumption, such as for animal food. Since most horsemeat is shipped overseas for human consumption, it is no longer economically viable for a horse slaughter facility to operate in a state that bans such production.¹⁸⁵ These two statutes effectively closed down the only three horse slaughter facilities in the United States. This ruling, however, was just the start of a legal battle between the slaughter facilities and the states.

In the wake of these rulings, the three affected horse slaughter facilities challenged the decisions. On appeal, the state of Illinois argued that the purpose of the statute was to protect horses and ensure their humane treatment within the borders of the state.¹⁸⁶ While this argument was not enough to avoid an injunction that would allow Cavel to resume business,¹⁸⁷ the Seventh Circuit Court of Appeals analyzed the statutes from the viewpoint of discrimination against foreign commerce.¹⁸⁸ The court found that the statute “interferes minimally with the nation’s foreign commerce and cannot be said to have no rational basis.”¹⁸⁹ The decision was appealed by Cavel International to the Supreme Court of the United States, but the Supreme Court ultimately denied certiorari.¹⁹⁰

One year earlier, Beltex and Dallas Crown suffered a similar result.¹⁹¹ Both Beltex and Dallas Crown, with Empacadora de Carnes de Fresnillo (a Mexican company that sells and transfers its horsemeat through Beltex), filed suit against Texas.¹⁹² Again, the District Court allowed for an injunction that prevented the state from prosecuting these companies for violating the state statute.¹⁹³ The constitutional arguments raised by Beltex, Dallas Crown, and Empacadora de Carnes de Fresnillo were not sufficient enough for the Fifth Circuit Court of Appeals to overturn the statute.¹⁹⁴ Beltex, Dallas Crown, and Empaca-

185. See *Empacadora de Carnes*, 476 F.3d at 329.

186. *Cavel Int’l*, 500 F.3d at 548.

187. *Id.* at 549.

188. See *Cavel Int’l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007).

189. *Id.* at 559.

190. *Cavel Int’l, Inc. v. Madigan*, 554 U.S. 902 (2008).

191. *Empacadora de Carnes de Fresnillo v. Curry*, 476 F.3d 326 (5th Cir. 2007), *cert. denied*, 550 U.S. 957 (2007).

192. See *id.*

193. See *Empacadora de Carnes de Fresnillo v. Curry*, No. 4:02-CV-804-Y, 2005 U.S. Dist. LEXIS 18261, at *35 (N. D. Tex. Aug. 25, 2005), *vacated and remanded*, 476 F.3d 326 (5th Cir. 2007).

194. See *id.*

dora de Carnes de Fresnillo also attempted to reach the ears of the U.S. Supreme Court, but they too were denied certiorari.¹⁹⁵

In light of these two states ending horse slaughter in the U.S., several other states have attempted be friendlier to horse slaughter. Montana was one of the first states to try to bring back horse slaughter. In May 2009, Montana's legislature passed House Bill 418 into law.¹⁹⁶ The state legislature made it legal to slaughter horses as long as slaughterhouses are licensed and horses are slaughtered separately from other animals that Americans typically eat.¹⁹⁷ Once this bill was passed, it was only a matter of time before there were plans to build a horse slaughter facility.¹⁹⁸ Hardin, Montana was to be the site of the U.S.'s next horse slaughtering facility, despite the restrictions placed on horse slaughter through federal means.¹⁹⁹ Citizens were concerned about the impact that a horse slaughter facility would have on their water treatment plant as a point source pollutant because horses have twice as much blood as cattle and horse blood is a difficult contaminant to treat.²⁰⁰ In April 2010, the city of Hardin acted to stop the progression of horse slaughter by passing an ordinance that limited slaughtering facilities to no more than twenty-five animals within a seven-day period.²⁰¹ Again, the method of eliminating horse slaughter was not by banning it; rather, it was accomplished by making it economically unviable. The Hardin city ordinance still allowed horse slaughter, just not on a large scale.²⁰²

Montana is not the only state that has tried to resurrect the horse slaughter business. States that have tried include Colorado, Wyoming, Illinois, South Dakota, and Nebraska. Every state seems to have a different motivation for trying to bring back horse slaughter. In Colorado, citizens are seeing the necessity of having a slaughterhouse because too many animals are being neglected and abandoned, thus increasing the wild horse population to an unsustainable level.²⁰³ The Wyoming state legislature takes a more economic approach to horse slaughter, and would like to be able to do something with horses that no longer have

195. *Empacadora de Carnes de Fresnillo v. Curry*, 476 F.3d 326 (5th Cir. 2007), *cert. denied*, 550 U.S. 957 (2007).

196. MONT. CODE ANN. §§ 81-9-201 & -232 (2011); *see also* Tim Nichols, *Montana Horse Slaughter Bill Becomes Law*, THOROUGHBRED TIMES, May 4, 2009, <http://files.ntra.com/content.aspx?type=stateleg&id=39267>.

197. §§ 81-9-201 & -232.

198. *See e.g.*, *Hardin Montana Says No To Slaughter Plant*, HARNESSLINK (Apr. 27, 2010), <http://www.harnesslink.com/News/Hardin-Montana-says-no-to-slaughter-plant-80084>.

199. *Id.*

200. *Id.*

201. HARDIN, MONT., CODE § 11-1-10 (2010).

202. *Id.*

203. Kevin Torres, *The Horse Slaughterhouse Debate in Colorado*, 9NEWS (Feb. 7, 2010), <http://www.9news.com/news/story.aspx?storyid=132336&catid=188>.

any value.²⁰⁴ Illinois takes a practical viewpoint and compares the ills of no horse slaughter to the ills of having horse slaughter.²⁰⁵ While many see slaughtering horses as a terrible thing, states are starting to realize it is a necessary evil as abandoned and neglected horses suffer a fate much worse than those being slaughtered and those that are shipped to Mexico or Canada.²⁰⁶

Even as recently as the beginning of 2011, South Dakota and Nebraska have brought bills before their respective legislatures trying to allow horse slaughter.²⁰⁷ South Dakota has tried multiple times to bring a similar bill, but has been highly criticized by animal rights groups.²⁰⁸ Legislators are hoping that by passing this bill, it will decrease the inhumane treatment currently associated with transporting horses for international slaughter.²⁰⁹ Nebraska also hopes to allow horse slaughter to combat the unintended consequences of the slaughter ban.²¹⁰ With the current economy, people cannot afford to care for their horses and the federal government has only made it harder to ship horses to Mexico and Canada.²¹¹ Efforts have been made to bring back horse slaughter, but as of yet, none have been successful.

VI. CONCLUSION: WHAT ARE THE NECESSARY CHANGES?

Ending the life of a perfectly health animal is a terrible loss, but allowing that animal to suffer is an even worse fate. No matter whom you ask about their position on horse slaughter, all put the welfare of horses at the forefront. In looking at the effects of a horse slaughter ban and the current economic situation, banning horse slaughter did not increase humane treatment of horses; rather, it had the opposite effect. It must be recognized that horse slaughter is not the ter-

204. Michael Van Cassell, *Horse Slaughter Plant May Open Here*, WYO. TRIB. EAGLE, Apr. 24, 2010, http://www.wyomingnews.com/articles/2010/04/24/news/01top_04-24-10.txt.

205. Angie Leventis Lourgos, *Bill Would Bring Back Horse Slaughterhouses*, CHI. TRIB., Mar. 3, 2010, http://articles.chicagotribune.com/2010-03-03/news/ct-x-w-horse-slaughter-0305-20100303_1_horse-slaughterhouses-cavel-international-animals-best-interest.

206. *Id.*

207. Christine Scalora, *Although Horse Slaughter Ban Lifted, State Inspection Program on Hold*, N. PLATTE BULL., Jan. 27, 2012, <http://www.northplattebulletin.com/index.asp?show=news&action=readStory&storyID=22289&pageID=24>; Cindy Davis, *Lawmakers Seek Funds for Horse Slaughter Plant in South Dakota*, KOTA TERRITORY NEWS (Jan. 28, 2011), <http://www.kotatv.com/story/13930374/lawmakers-look-for-funds-for-horse-slaughter-plant-in-south-dakota>.

208. Davis, *supra* note 207.

209. *Id.*

210. Heather Johnson, *Bill Sheds Light on Equine Industry Issues*, N. PLATTE TELE., Jan. 17, 2011, http://www.nptelegraph.com/news/bill-sheds-light-on-equine-industry-issues/article_28ef4314-8bf7-57f8-9fc3-6f316f525255.html.

211. *Id.*

rible evil that it is made out to be, and that it is imperative for horse owners to have alternatives when it comes to humanely ending their responsibility of caring for their horse.

To ensure the humane treatment of horses in the United States, horse slaughter is a necessary evil. Horse owners need to be aware of humane ways to dispose of their horses. Owners must be educated upfront about not only the daily requirements of owning a horse, but also the long-term needs that a horse will have, including how and when to end the life of a horse. They also need to be held accountable by the equine community, the government, and the public at-large for any and all inhumane treatment of their horses. Even with all these steps perfectly in order, horse slaughter is still necessary. There will still be situations where slaughter is the only answer. As long as there are requirements for the humane treatment of horses throughout the entire slaughtering process—starting with the buying process and ending with the actual slaughter itself—there is no reason that slaughter cannot be a viable, yet humane option for horses that have outlived their purpose. Not only would it help decrease instances of neglect and abandonment, but it would also give rise to a “new” industry that would create countless jobs.

Horse slaughter does not have to be an inhumane process. APHIS and the USDA must work together to implement regulations that will ensure the safety of horses throughout the slaughter process. Both entities have started this process by requiring a humane method of death through the use of a captive bolt gun, which has been approved by the AVMA as one of three humane methods of death for a horse.²¹² The government has put statutes into place that prevent the neglect and abuse of horses and punish those who do neglect and abuse their horses. The biggest problem with such statutes is their generic nature—most govern animals generally, not equines specifically. While there is little question that these statutes would apply to equines, the argument still remains that the statutes only apply to small animals; thus, this loophole needs to be addressed.

In addition, there is little to no recourse against a person who abandons their horse. It is difficult to track down the owner of an abandoned horse. A better way to track down the owner of an abandoned horse in order to hold them responsible for injuries that the horse has suffered is a necessity.

The most important loophole in the system that must be addressed is with APHIS. APHIS is charged with the power to oversee the shipping of horses for slaughter, but is woefully under-armed when it comes to enforcing the regulations that have been set in place. Together, the USDA, APHIS, and Congress

212. AM. VETERINARY MED. ASS'N, *supra* note 16, at 35.

must help tighten and close these loopholes so when violations of shipping regulations occur, violators are actually punished and repeat offenses are deterred.

Because of limited resources, implementing these different choices to help improve horse welfare will take time. In the meantime, allowing horses to suffer is not an acceptable option. There are still hundreds of thousands of horses that are unwanted with owners who are unable to properly care for them.²¹³ These animals need to be properly cared for, whether it is finding them a loving home or preventing them from living a cruel life. Horse slaughter is one way to help the horse community as a whole. There is an opportunity at the federal level for horse slaughter to be re-implemented, as Congress and President Obama have lifted the ban on using USDA funding for the inspection of horse slaughter facilities. States are willing and ready to build horse slaughter facilities if funding is made available for USDA inspectors.²¹⁴ It would be a great benefit to the horse community if full advantage were taken of that opportunity. In the end, ensuring that horses receive humane treatment throughout their life is the goal, and ultimately horse slaughter is not adverse to that goal.

213. House, *supra* note 23.

214. See e.g., Davis, *supra* note 207.