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DEVELOPMENTS IN ANIMAL LAW: AN EVOLVING AREA IN VIRGINIA LAW

Ryan Murphy *

INTRODUCTION

On December 15, 2013, my wife and I welcomed a puppy into our family. We love dogs, grew up with them, but we had never raised one (or any living creature for that matter). As I drove to our Richmond Fan apartment from the foster home in Goochland, I felt helpless while he scratched at the carrier, frantic and screeching. During his first weeks with us, he smelled, relieved himself frequently and anywhere, and exhibited signs of abdominal distress that sent us on a trip to the companion animal equivalent of an emergency room.

Two years later he chases cats, retrieves sticks, splashes in mud, and chews and consumes things too obscene to mention. He learns tricks and the names of his toys. He ignores commands. He has also begun grunting (no other word could describe the peculiar emanation) at 6:00 PM until I let him outside. And I think he loves us.3

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* J.D., 2014, University of Richmond School of Law; B.A., 2007, University of Virginia. I am grateful to Assistant Attorney General Michelle Welch for discussing the newly created Animal Law Unit and her comments on Part I of this article. Thank you also to Sarah Murphy, who provided comments and suggestions, and the University of Richmond Law Review staff. The views and opinions expressed herein are those of the author and do not necessarily reflect the position of his employer.

2. See id. at 251–52 (citing a study indicating that dogs “cue” humans).
We adopted Nico through For the Love of Animals in Goochland ("FLAG"). As I understand, the owner of the beagle that whelped Nico did not want the puppies, and one way or another, a FLAG foster care provider began caring for a litter of puppies newly separated from their dam.

It would seem that Nico is (and we are) fortunate: fortunate that organizations like FLAG exist; fortunate that such organizations promote adoption and humane methods of controlling feral populations while reducing resource drain in shelters. Across the United States, an estimated 3.9 million dogs and 3.4 million cats enter shelters—an estimated 1.2 million dogs (31%) and 1.4 million cats (41%) are euthanized in those shelters. In Virginia, the Department of Agriculture and Consumer Services annually compiles data from shelters in the Commonwealth. The 2014 report indicates that over ninety thousand dogs and seventy-five thousand cats entered shelters in the Commonwealth—and nearly seventeen thousand dogs and over thirty-two thousand cats were euthanized, representing roughly 18% and 38% of the shelter populations, respectively.

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4. FLAG is an all-volunteer, non-profit "private animal shelter" dedicated to rescuing and finding homes for abandoned and neglected dogs. See VA. CODE ANN. § 3.2-6500 (Cum. Supp. 2015) (defining "home-based rescue" and "private animal shelter").

5. See id. § 3.2-6510 (prohibiting any person from giving away any dog under the age of seven weeks without its dam).


7. No government agency or private organization routinely tracks the influx and disposition of animals within shelters nationwide. Pet Statistics, AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, https://www.aspca.org/about-us/faq/pet-statistics (last visited Oct. 1, 2015); see also Pets by the Numbers, HUMANE SOC'Y OF THE U.S. (Jan. 30, 2014), http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html. Approximately 35% of the 3.9 million dogs and 37% of the 3.4 million cats entering shelters are adopted. Pet Statistics, supra. But while 26% of dogs that enter as strays are reunited with their owners, only 5% of such cats are reclaimed. Id.

8. VDACS Online Animal Reporting, VA. DEPT OF AGRIC. & CONSUMER SERVS., https://arr.va-vdacs.com/cgi-bin/vdacs_search.cgi (last visited Oct. 1, 2015). I calculated the number of animals entering a shelter in the Commonwealth by omitting the number of animals transferred between releasing agencies and the number "on hand" beginning January 1, 2014. The euthanasia rates include the number "on hand" beginning January 1, 2014. Including the number of animals "on hand" beginning January 1, 2014, approximately 45% of the canine shelter population and 45% of the feline shelter population was adopted. Id. Similar to the data nationwide, 22% of dogs that entered the shelter were reclaimed by the owner, while only 2% of cats were reclaimed. Id.
We are fortunate that Nico never spent a day in a puppy mill.9 While no official definition exists, puppy mills are marked by "high volume" breeding, inadequate space and exercise, and inadequate veterinary care.10 A 2010 audit report issued by the United States Department of Agriculture, Office of the Inspector General documented dogs at a number of facilities living with untreated wounds, lesions rotting to the bone, and tick infestations, among other ailments.11 The report highlighted unsanitary practices—such as permitting excrement and urine to accumulate in kennels and contaminate water and food—that pose health risks to the animals and to humans.12 At one facility, inspectors found multiple "dead dogs and other starving dogs that had resorted to cannibalism."13 Moreover, puppy mills contribute to pet overpopulation, and consequently, the high rates of euthanasia described above.14 Such horrors have been documented since the early 1990s, but despite traditional state regulatory authority to control land use and combat nuisances, puppy mill abuses continue.15 Federal legislators have repeatedly introduced bills aimed at curbing puppy mill abuses only to watch them die on the floor.16

Part I of this article will survey the developments in Virginia animal law between the 2014 and 2015 sessions of the General Assembly, as well as several ongoing debates. Virginia has taken a progressive approach to this evolving field of law—recent action includes introducing the nation's first Attorney General Animal Law Unit in 2015 and enacting a law designed to counteract the

11. OIG AUDIT REPORT, supra note 10, at 11-12.
12. Id. at 20-21.
13. Id. at 13.
competitive advantages enjoyed by puppy mills in 2014. Part I will also address a few examples of defeated legislation to assess the merits of such.

Part II of this article will propose a voluntary labeling program for Virginia designed to connect local Virginia meat and poultry producers with consumers concerned about the raising (production) methods employed by factory farms and the environmental impacts of such. A theme throughout this article is the relationship between animal welfare and other societal and legal concerns—including criminal law, domestic relations, and consumer protection.

I. VIRGINIA ANIMAL LAW: A SURVEY OF DEVELOPMENTS AND DEBATES

A. Outlining the Regulatory Regime

A brief sketch of the Virginia authorities charged with administering animal laws situates the area with respect to related fields. The primary source of Virginia animal law is Chapter 65 of Title 3.2 of the Virginia Code entitled “Comprehensive Animal Care” (“Animal Code”). The Animal Code vests the Board of Agriculture and Consumer Services (“Board”) with authority to adopt regulations and guidelines necessary to administer and enforce its provisions. The Board also promotes the Commonwealth’s agricultural interests and oversees the Commonwealth’s farmers’ market system.

The Commissioner of Agriculture and Consumer Services (“Commissioner”) is the executive officer of the Board and directs various programs through the Department of Agriculture and

19. Id. §§ 3.2-100, -6501 (Repl. Vol. 2008). The Board is comprised of fifteen citizen members appointed by the governor for four-year terms. Id. § 3.2-109 (Cum. Supp. 2015). Currently, at least eight members must be practicing farmers and two members must be affiliated with the pesticide industry. Id.
20. Id. § 3.2-111 (Cum. Supp. 2015).
Consumer Services ("VDACS"). These programs generally relate to agricultural marketing, product grading and certification, food and dairy inspection, consumer protection and education, and encouraging animal welfare.

With respect to animal welfare, the Animal Code empowers the State Veterinarian to inspect shelters and businesses for violations of its provisions, violations of other state law governing animal welfare, and violations of other state law governing property rights in animals. More broadly, the Animal Code charges all law-enforcement officers in the Commonwealth with responsibility for enforcement, and it directs counties and cities to employ animal control officers with authority to enforce the chapter and related ordinances.

The Animal Code concerns domestic animals, a category including agricultural animals and companion animals. As suggested above, domestic animals within Virginia borders are property.

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25. For a brief discussion of the consequences of such distinction, see infra Part II. In Virginia, a "companion animal" is any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person.
VA. CODE ANN. § 3.2-6500 (Cum. Supp. 2015). The definition excludes "agricultural animals, game species, or any animals regulated under federal law as research animals. Id. "Agricultural animals" include "poultry," meaning "all domestic fowl and game birds raised in captivity," and "livestock," defined as "all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; rattes; fish or shellfish in aquaculture facilities . . . or any other individual animal specifically raised for food or fiber." Id.
26. See id. § 3.2-6585 (Repl. Vol. 2008); cf. id. § 3.2-5900 (Repl. Vol. 2008).
For that reason, it is anomalous (in the context of this article) to speak of an animal possessing rights: to the extent that the law supplies protection or prescribes certain treatment for an animal, such prescription is derived from a human property interest. And generally, the human property interest can be defined according to the category of animal. Consequently, provisions for the welfare of animals are intimately related to the interests of their owners.

The following sections discuss recent developments in Virginia animal law. The Animal Code has many strengths, but its potential lays in further interdisciplinary advancements.

B. The Attorney General Animal Law Unit

On the heels of the successful prosecution of the “Big Blue” cockfighting pit operators, Virginia Attorney General Mark Herring announced the creation of the nation’s first Attorney General Animal Law Unit (“Unit”). The Unit will serve as a resource for local law enforcement and prosecutors, which will retain their customary enforcement and prosecution authority for violations of animal welfare standards and crimes of animal fighting or abuse. The Unit will also provide training with respect to identifying violations, preserving evidence, and managing other evidentiary issues. Upon request from the primary prosecuting authority, members of the Unit are prepared to serve—and have

29. First Attorney General's Animal Law Unit, supra note 17. The Unit has five attorneys who split their time between the Unit and other divisions within the Attorney General's Office. Interview with Assistant Attorney General Michelle Welch, Head of the Animal Law Unit (Mar. 10, 2015) (on file with author).
30. First Attorney General's Animal Law Unit, supra note 17.
31. Interview with Assistant Attorney General Michelle Welch on Mar. 10, 2015, supra note 29.
served—as special prosecutors, a role that encompasses duties ranging from advisory to full involvement in the minutiae of trial.  

Since its creation in January 2015, the five-attorney Unit has already provided assistance in over 100 cases across the Commonwealth, offering its expertise to prosecutors confronting issues ranging from animal fighting to animal hoarding. And apart from providing case assistance, the Unit is designing—or has already implemented—a number of programs, including several for law-enforcement agencies. Among these initiatives, the Unit is currently designing a pilot program with the Virginia Association of Chiefs of Police, the Virginia Sheriff’s Association, and the National Sheriff’s Association that will introduce a uniform curriculum and training on animal fighting and cruelty into police academies. A standardized approach to these and related issues in the academy could result in more effective policing and prosecution in the community and the courts.

In addition, the Unit is considering police training based on a program designed by the National Canine Research Council with Safe Humane Chicago and the United States Department of Justice, Office of Community Oriented Policing Services that aims to provide police with strategies for interacting with dogs while on-duty. As law-enforcement tactics come under increasing scrutiny, the use of force against companion animals has often been a point of contention between communities and the officers that serve them. Besides the emotional backlash, and the distrust

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32. Id.; see “Big Blue” Cockfighting Pit, supra note 28.
33. Interview with Assistant Attorney General Michelle Welch, Head of the Animal Law Unit (June 9, 2015) (on file with author).
34. Id.
35. Id.
36. Prior to the Unit’s formal creation, the Office of the Attorney General sponsored a conference for law-enforcement on animal fighting in November 2014. Id. Despite a number of high profile Virginia cases involving animal fighting, it was the first time that the Office of the Attorney General had sponsored a conference on this topic. Id.
such use of force engenders, the killing of a companion animal carries significant legal consequences for a locality: courts uniformly hold that the killing of a companion animal by police implicates the Fourth Amendment.39

As noted above, in Virginia and elsewhere, an owner holds a possessory interest in his or her companion animal.40 Consequently, a companion animal is an "effect" for Fourth Amendment purposes and therefore qualified for protection from "unreasonable" seizures.41 The inquiry into whether a seizure is reasonable requires a careful balancing of the officer's actions and the stated governmental justification for such actions in light of the circumstances of the encounter.42 In other words, the inquiry is fact intensive.43 Sizeable judgments turn on an officer's ability to read the situation, read the body language of a dog or provide it with cues, or even avoid an encounter altogether.44 The comprehensive training would involve working with a dog behaviorist and would include tactical strategies, education regarding dog behavior and postures, and guidelines for communicating with and reacting to dogs.45 If implemented, the program has the potential to reduce the number of police-dog encounters involving force, thereby reducing the risk of judgments against localities and promoting community policing throughout the Commonwealth.

Other initiatives examine the relationship between interpersonal violence and animal abuse.46 Currently, the Unit is studying

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39. See Viilo v. Eyre, 547 F.3d 707, 710 (7th Cir. 2008); accord San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose, 402 F.3d 962, 975 (9th Cir. 2005); Altman v. City of High Point, 330 F.3d 194, 204–05 (4th Cir. 2003); Brown v. Muhlenberg Township, 269 F.3d 205, 210 (3d Cir. 2001).

40. See VA. CODE ANN. § 3.2-6585 (Repl. Vol. 2008); Altman, 330 F.3d at 201–04 (discussing the common law property interest in dogs); Brown, 269 F.3d at 210 (citing 3 PA. STAT. AND CONS. STAT. ANN. § 459-601(a) which declares dogs to be personal property).

41. Altman, 330 F.3d at 203. A "seizure" occurs when "there is some meaningful interference with an individual's possessory interests in [personal] property." Id. at 223 (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)).

42. See id. at 205.

43. Compare id. at 206, with Hells Angels Motorcycle Club, 402 F.3d at 976–77, and Brown, 269 F.3d at 210–11; see also Viilo, 547 F.3d at 710.

44. See Griffith, supra note 38; Trice & Gorner, supra note 38.

45. See Griffith, supra note 38.

46. The relationship is discussed further in Part I.C infra.
the history of Virginia’s sexually violent predators, looking for examples of sexual deviancy with animals or examples of other animal abuse in their backgrounds that might establish an association between such behavior and later sexually violent behavior against humans. A number of studies have linked animal abuse and violent crimes against humans; some have even suggested that a history of animal abuse in childhood or adolescence may be a risk factor for future violent behavior. Much of the research essentially reports that domestic violence—spousal abuse, child abuse, and elder abuse—and animal cruelty “often occur in the same households...” Consequently, criminologists have concluded that the relationship between acts of cruelty against animals and acts of violence against humans demands further study; key questions include: Is animal cruelty a symptom or effect of mental disorder, an outcome of witnessing violence or experiencing abuse, or a point along a spectrum of violence from which an abuser graduates to interpersonal violence? Can preventing animal abuse or rehabilitating an abuser reduce the risk of future violence against humans? The Unit’s research may provide additional data for criminologists seeking answers to those questions.

As it conducts its own research, the Unit is contributing to the dialogue on “the Link” in other ways. In May 2015, the Unit conducted a training session on the relationship between animal abuse and domestic violence for advocates, Department of Social Services officials specializing in child and adult protective services, law-enforcement officers, and animal control officers. The Unit intends to host a session on these issues in each region of Virginia.

47. Interview with Assistant Attorney General Michelle Welch on Mar. 10, 2015, supra note 29.
49. Petersen & Farrington, supra note 48, at 32, 34–35.
50. Id. at 38.
51. Id.
53. Interview with Assistant Attorney General Michelle Welch on June 9, 2015, supra note 33.
the Commonwealth to ensure that the dialogue continues to occupy a space in the mainstream.\textsuperscript{54}

C. Cross-Reporting and New Conditions in Protective Orders

Though the probabilistic relationship between animal cruelty and interpersonal violence requires further study, the correlation between animal cruelty and domestic violence has immediate implications, including the possibility that an abuser could threaten or abuse a companion animal as a means to control the abused or prevent the abused from seeking shelter.\textsuperscript{55} The General Assembly responded to research indicating that abused individuals delay or forgo shelter out of concern for their pets by passing 2014 Acts chapter 346, which explicitly authorizes courts to provide for custody of companion animals in protective orders.\textsuperscript{56} Under the provisions of 2014 Acts chapter 346, the petitioner for a protective order may retain possession of any companion animal in the household provided the petitioner meets the definition of an “owner.”\textsuperscript{57} The Animal Code defines “owner” broadly to include “any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv)
acts a custodian of an animal. Consequently, many (if not most) petitioners now have legal ground to remove companion animals from abusive situations. But practical impediments remain; even if a petitioner seeks and obtains a protective order containing a provision for his or her companion animal, not all shelters will accept pets. Policies and programs—likely at the local level—must encourage domestic violence programs to partner with animal shelters to achieve the purpose behind 2014 Acts chapter 346 and provide abused individuals with more options for leaving abusive situations.

Next, the association between animal cruelty and interpersonal violence suggests certain tools with potential criminological benefits. In particular, tools based on cross-reporting animal cruelty and interpersonal violence will allow agencies or organizations with authority in one sphere—animal control, child services, domestic violence—to share information about individual incidences that may indicate a larger pattern of household violence. In turn, the information obtained through cross-reporting may permit service providers to make more effective and timely interventions in abusive situations. In the Commonwealth, animal control officers have a statutory duty to report suspected child abuse or neglect, and the basic animal control course must include training in recognizing evidence of child abuse or neglect. However, these statutes provide only for one-way reporting, and no Virginia statutes provide for cross-reporting of other spheres of domestic violence.

60. DeGue & DiLillo, supra note 55, at 1050 (concluding that animal abuse may provide a "more reliable marker for other forms of family violence" for cross-reporting systems, according to the authors' research); see Petersen & Farrington, supra note 48, at 37 (discussing UK pilot program).
61. See DeGue & DiLillo, supra note 55, at 1050.
During the 2015 session, Senator William M. Stanley Jr. (R-20th Senate District) and Delegate David I. Ramadan (R-87th House District) introduced Senate Bill 700 and House Bill 1354, which would have created a registry of animal abusers. The registry, named the “Animal Cruelty Conviction List,” would, first, provide animal shelters and pet stores with a record of convicted animal abusers, which shelters and pet stores could consult before authorizing an adoption or completing a sale. Currently, a court may prohibit a person convicted of animal cruelty from possessing or owning a companion animal by order; however, shelters and stores lack a mechanism for quickly identifying persons under such court orders. Proponents also contend that such registries may provide a tool for combating animal hoarding, an under-addressed welfare issue.

64. Both bills provided that:

The Superintendent of State Police shall establish, organize, and maintain within the Department of State Police, by 2017, a computerized Animal Cruelty Conviction List (the List) as a database of information regarding persons convicted of a felony violation of the prohibition against (i) cruelty to animals as provided by § 3.2-6570; (ii) animal fighting as provided by § 3.2-6571; (iii) maiming, killing, or poisoning an animal as provided by § 18.2-144; or (iv) killing or injuring a police animal as provided by § 18.2-144.1. Information on the List shall include the name of the offender at the time of conviction as well as the offense for which the offender was convicted and the date and jurisdiction of conviction. Access to the List shall be made available to the public on the website of the Department of State Police.

Effective July 1, 2015, a person convicted of an offense listed in clauses (i) through (iv) shall pay a fee upon conviction in the amount of $50 per conviction that shall be used by the State Police to pay for the maintenance of the List. The State Police shall automatically purge from the List a person’s name and information 15 years after listing if he has no additional felony conviction of an offense listed in this section.


Burgeoning research indicates that more than 1000 cases of animal hoarding occur every year in the United States. Though the behavior remains relatively unstudied, the American Psychiatric Association recently recognized animal hoarding as a psychiatric disorder. Other researchers have characterized animal hoarding as “a symptom of a larger maladaptive situation” or a possible manifestation of other psychological disorders (such as dementia, delusional disorders, and obsessive compulsive disorder), but no matter the underlying cause, simply removing the animals is ineffective. Without effective intervention (including treatment) and monitoring, a hoarder will almost certainly relapse: researchers estimate that the recidivism rate exceeds 50%. Documented cases of animal hoarding frequently involve conditions that would be universally considered inhumane—and threatening to human health—yet the hoarder is frequently unaware (or unwilling to admit) that the animals are ill, dying, or dead, and that the space has become uninhabitable. In a recent Virginia case, officers found over fifty animals, many with open sores or unaddressed medical issues, and generally unsanitary conditions.

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69. See Soler, supra note 67.


71. Reinisch, supra note 70, at 1212.

72. P. Calvo, C. Duarte, J. Bowen, A. Bulbena & J. Fatjó, *Characteristics of 24 Cases of Animal Hoarding in Spain*, 23 ANIMAL WELFARE 199, 199 (2014); Patronek, *Hoarding of Animals*, supra note 68, at 84–85. One study of animal hoarding found that 16% of involved residences were condemned as unfit for human habitation, 93% were deemed unsanitary, and 70% had outstanding fire hazards. Reinisch, supra note 70, at 1211.

In many cases, the costs to clean up sites and care for rescued animals can be staggering and are generally borne by localities.  

Hoarding cases implicate the jurisdiction of multiple agencies—a local government with ordinances limiting the number of pets in a household, an animal welfare organization, social services, and public health authorities will each have expertise to contribute in such cases. A registry would provide a means for reducing the risk of recidivism by reducing recovering hoarders’ access to animals and by increasing oversight by third-parties without increasing the number of intrusive inspections. Moreover, a registry may promote an atmosphere conducive to cross-reporting between such agencies so that future cases are discovered and treated during their early stages.

Similarly, proponents contend that an animal abuse registry would reduce dog fighters’ access to low-cost “bait” dogs by providing notice to animal shelters and pet stores. As applied to dog fighters, the argument appears tenuous; whereas isolation is a common characteristic of hoarders, dog fighters often operate in rings and may be able to evade barriers to access by using third parties. Nonetheless, a registry would expose dog fighters and other abusers to additional scrutiny that could bring recidivist behavior to light.

Critics of registry laws argue that the laws do not directly help animals, can be costly to implement, publicly shame offenders, and capture a broad range of conduct, some of which may be inadvertent or negligent. As an initial matter, the registry would

the purpose of facilitating adoption and houses such companion animals in a foster home or a system of foster homes.” Act of Mar. 5, 2014, ch. 148, 2014 Va. Acts 1, 1 (codified as amended at VA. CODE ANN. § 3.2-6500 (Cum. Supp. 2015)). Previously, the definition included “any person” who “accepts more than 12 companion animals [or] more than nine companion animals and more than three unweaned litters of companion animals in a calendar year” for the purpose of finding permanent homes for such companion animals. VA. CODE ANN. § 3.2-6500 (Repl. Vol. 2008). Presumably, the amendment will prevent hoarders from claiming the status of a home-based rescue operation.

74.See Urbina, supra note 67.
75. See Reinisch, supra note 70, at 1214.
76. See, e.g., Green, supra note 65.
77. See, e.g., Green, supra note 65.
78. Patronek, Hoarding of Animals, supra note 68, at 84, 86; see Reinisch, supra note 70, at 1211.
80. See, e.g., Va. Dep’t of Planning & Budget, 2014 Fiscal Impact Statement, VA.
list only individuals convicted of felony cruelty or other felony violations (dog fighting, injuring or killing a police animal), which would exclude merely inadvertent or negligent behavior. For example, a felony conviction for failing to provide veterinary treatment under Virginia Code section 3.2-6570(B)(iv) requires the Commonwealth to prove that the person “maliciously” deprived a companion animal of “necessary food, drink, shelter or emergency veterinary treatment”—where “emergency veterinary treatment” is defined as “veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.” Canons of statutory construction would lead courts to conclude that the definition excludes treatment for minor conditions—unless the condition became degenerative, life-threatening, or caused the animal to suffer, and the person failed to obtain treatment maliciously. Moreover, a felony conviction under section 3.2-6570(B)(iv) requires a prior animal cruelty conviction and either the prior or the instant


81. VA. CODE ANN. §§ 3.2-6500, -6570(B)(iv) (Cum. Supp. 2015). While “necessary” food, drink, or shelter are undefined, the Animal Code does define “adequate” feed, water, and shelter. Id. § 3.2-6500 (Cum. Supp. 2015). In relevant part, subsection (B) of section 6570 states:

Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; . . . (iv) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (v) instigates, engages in, or furthers any act of cruelty to any animal set forth in clauses (i) through (iv) or (vi) causes any of the actions described in clauses (i) through (v), or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, is guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal . . . .

Id. § 3.2-6570(B) (Cum. Supp. 2015). Subsection A states the elements of misdemeanor animal cruelty. See id. § 3.2-6570(A) (Cum. Supp. 2015); id. § 18.2-403.1 (Repl. Vol. 2014).
conviction to have resulted in the death of the animal.\textsuperscript{82} A felony conviction under Virginia Code section 3.2-6570(F), which prosecutors invoke more often, requires the Commonwealth to prove that the defendant "torture[d], willfully inflict[ed] inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beat[], maim[ed] or mutilate[d]" a companion animal and directly caused its death or directly caused it to be euthanized due to its condition.\textsuperscript{83} Again, this section excludes merely negligent or inadvertent behavior.

Nonetheless, the criticisms are well taken and suggest ways to broaden the registry’s appeal. For one, the registry need not be public—access to the registry could be limited to criminal agencies, animal welfare organizations, social services, and public health authorities. In other words, access could be limited to the agencies that would benefit most from cross-reporting incidents of cruelty. Second, criticisms related to the cost of maintenance re-emphasize the need to research and assess the value of cross-reporting. The debate about cost is a debate about the precautionary principle: should we favor over-protection of vulnerable individuals (children, victims of spousal abuse, the elderly) even if we are unsure of the benefits? Will a registry impose unforeseen costs on the same vulnerable population? Accurately weighing the cost of maintenance against the value of the registry will likely require some jurisdictions to serve as test cases.\textsuperscript{84}

D. Local Authority to Manage Animal Populations

The euthanasia figures cited in the Introduction reflect an overpopulation problem, which in turn is an ownership problem.\textsuperscript{85}

\textsuperscript{82} See id. § 3.2-6570(B) (Cum. Supp. 2015).
\textsuperscript{83} Id. § 3.2-6570(F) (Cum. Supp. 2015).
\textsuperscript{84} See Petersen & Farrington, supra note 48, at 37 (noting that organizations in the United Kingdom are implementing pilot programs). A few states have existing cross-reporting requirements, but often the reporting moves in only one direction, and as a result, information sharing is incomplete. See Cross-Reporting—Mandatory & Permitted, NAT'L LINK COALITION, http://nationallinkcoalition.org/wp-content/uploads/2014/10/Cross-reporting-Mandatory-Permitted-2014.doc (last updated Oct. 18, 2014).
There are more adoptable animals than there are willing, capable homes, and multiple factors contribute to this shortfall. 86 Animal welfare advocates often promote spay and neuter programs, adoption, and owner education as strategies for reducing the shortage, but advocates are split on when, or even if, to use euthanasia to address overpopulation. 87 During the past General Assembly session, the rift between the “no-kill” movement and others who view euthanasia as sometimes necessary exploded over an apparently minor clarification to a definition in the Animal Code. 88

The dispute centered on a Norfolk animal shelter operated by People for the Ethical Treatment of Animals (“PETA”) that euthanized 1536 of the 1606 cats and 788 of the 1025 dogs that it received in 2014, leading to charges that the shelter failed to make bona fide efforts to find adoptive homes for its animals. 89 PETA counters that it takes animals other shelters will not and that euthanasia may sometimes be the humane approach to overpopulation. 90

Before the amendment, the Animal Code defined “private animal shelter” as

a facility that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals. 91

86. See, e.g., Pet Overpopulation, supra note 85; Shelter Euthanasia—Whose Fault Is It Anyway?, 12 N.Y. St. HUMANE ASS’N (1998), http://www.nyshumane.org/article-shelter-euthanasia-whose-fault-is-it-anyway/ (citing owners’ failure to neuter or spay pets, puppy mills that overbreed animals, and irresponsible ownership decisions).


88. Id.


In the above definition, the present participle phrase, “operating for the purpose of finding permanent adoptive homes for animals,” probably modifies only “any other organization”—leaving open for interpretation whether the mission of “a humane society, animal welfare organization, or society for the prevention of cruelty to animals” had to include “finding permanent adoptive homes for animals.” As introduced, Senate Bill 1381 shifted the participle phrase so that the phrase modified “facility”—thereby clarifying that a private animal shelter is necessarily a facility “operated for the purpose of finding permanent adoptive homes” by one of the enumerated organizations.

Senate Bill 1381 also included language that would have required private animal shelters to “facilitat[e] other lifesaving outcomes for animals”—language interpreted as a direct challenge to PETA and as advancing a “no-kill” philosophy. The version signed into law omits that language. Nonetheless, the bill achieves a substantive effect and suggests that the Commonwealth will favor “no-kill” policies and strategies to control overpopulation.

As noted, “no-kill” strategies include sterilization programs to prevent unwanted litters and reduce feral populations. Multiple bills designed to promote trap-neuter-return (“TNR”) programs were introduced, but not passed, this session. The first, Senate Bill 698, would have established a fund to reimburse veterinarians who spay or neuter eligible animals, including the companion animals of low-income owners, companion animals held by a “re-
leasing agency,” and feral or free-roaming cats. The bill would have established a surcharge on pet food to sustain the fund.

The others, Senate Bill 699, House Bill 1586, and Senate Bill 693, responded to a 2013 opinion issued by former Virginia Attorney General Kenneth T. Cuccinelli, which concluded that, while a locality may lawfully trap and sterilize feral cats, it would be illegal to release the sterilized feral cat to the environment. The Attorney General noted that animal control officers had a duty “to capture and confine any companion animal of unknown ownership running at large.” Moreover, the Attorney General reasoned that the Commonwealth’s policy favored sterilization of companion animals. But the Attorney General found that Virginia Code section 3.2-6546(D) provided only five methods of disposition: (1) release to a humane society, public or private animal shelter, or another releasing agency within the Commonwealth; (2) direct adoption by a resident of the locality; (3) direct adoption by a resident of an adjacent political subdivision; (4) direct adoption by any other person; or (5) release to an animal shelter outside the Commonwealth for the purpose of adoption or euthanasia. Given that the Animal Code prescribed certain methods of disposition, the Attorney General concluded that the General Assembly had determined that sterilized feral cats could not be released to the environment by a locality. Indeed, the Animal

96. S.B. 698, Va. Gen. Assembly (Reg. Sess. 2015). The bill defined “low-income owner” as “an animal owner who is a resident of Virginia and whose gross annual income is no more than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.” Id. A “releasing agency” is “a public . . . or private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that release companion animals for adoption.” VA. CODE ANN. § 3.2-6500 (Cum. Supp. 2015).

97. Id. at 2 (quoting VA. CODE ANN. § 3.2-6562 (Repl. Vol. 2008)).

98. Op. to Douglas W. Napier (July 12, 2013). The opinion applies only to programs run by localities. Id. at 5 (“It is my opinion that a locality may lawfully operate a capture and sterilization program . . . . The feral cats may not, however, be released by the locality back to the location from whence they came or some other location in the wild.”) (emphasis added).

99. Id. at 2–3 (citing VA. CODE ANN. §§ 3.2-6534, -6574 (Repl. Vol. 2008)).

100. Id. at 4; VA. CODE ANN. § 3.2-6546(D) (Repl. Vol. 2008).

101. Op. to Douglas W. Napier (July 12, 2013), at 4; see E.I. du Pont de Nemours & Co. v. Eggleston, 264 Va. 13, 18, 563 S.E.2d 685, 687 (2002) (“[T]he mention of a specific item in a statute implies that other omitted items were not intended to be included within the scope of the statute.”).
Code prohibits abandoning or dumping animals without securing care for the animal. 103

Senate Bill 693 provided that individuals and organizations could participate in TNR programs without reservation: the bill explicitly immunized TNR participants from any criminal or civil liability except in the case of willful or wanton misconduct. 104 Senate Bill 699 and House Bill 1586 proposed institutionalizing TNR by directly authorizing localities to operate TNR programs. 105 All three bills were limited to TNR of feral cats. 106

As the Attorney General recognized, the Commonwealth promotes sterilization as a humane method to control companion animal population, prevent unnecessary euthanasia, and reduce strain on animal shelter resources that would be required to sustain animal populations therein. For example, Virginia law provides that a cat or dog—held by a releasing agency—must be spayed or neutered before it is eligible for adoption. 107 Further, localities are authorized to collect license taxes to support “[e]fforts to promote sterilization of dogs and cats.” 108 The bills discussed above would advance this policy; however, legislative efforts alone likely cannot substitute for educating potential pet owners about sterilization, adoption, and the consequences of ownership, or substitute for better understanding the common motivations for pet relinquishment and how to prevent it. 109


104. S.B. 693, Va. Gen. Assembly (Reg. Sess. 2015). For example, an individual who trapped and sterilized a companion animal knowing it to be the companion animal of another person would likely remain subject to civil liability. See VA. CODE ANN. § 3.2-6585 (Repl. Vol. 2008). Senate Bill 693 passed the Senate, but was left in the House Committee on Agriculture, Chesapeake, and Natural Resources. S.B. 693 Feral Cats; Trapping, Neutering, and Returning to Site Activity, VA. LEGIS. INFO. SYS., https://leg1.state.va.us/cgi-bin/legalp504.exe?ses=151&typ=bil&val=SB693 (last visited Oct. 1, 2015).


106. See S.B. 693; S.B. 699; H.B. 1586.

107. VA. CODE ANN. § 3.2-6574(B)(1) (Cum. Supp. 2015). Alternatively, the individual may sign an agreement promising to sterilize the animal within thirty days after the animal reaches six months of age. Id. § 3.2-6574(B)(2) (Cum. Supp. 2015). A person who violates this section is subject to a civil penalty up to $250. Id. § 3.2-6574(F) (Cum. Supp. 2015).

108. Id. § 3.2-6534(6) (Cum. Supp. 2015).

E. Regulatory Phase-Out of Fox Penning

In 2014, the General Assembly staked out a position amidst a roiling debate over fox penning, which became a symbol of the expanding cultural divide between urban and rural Virginia.\(^\text{110}\) Fox penning took root in Virginia during the 1980s as a means to train foxhounds, but has since evolved into a commercial venture with judged competitions.\(^\text{111}\) Today, thirty-seven pens ranging from a hundred to several hundred acres operate in Virginia—mostly in Southside—and they attract thousands of patrons.\(^\text{112}\)

The enclosed pens are stocked with wild caught foxes; a 2004 study found that just over half of the stock in one pen was killed during competitions and 88% of the stock perished within eighteen months.\(^\text{113}\) The Virginia Department of Game and Inland Fisheries ("VDGIF") reported that more than 5800 foxes were delivered to the pens in the five years preceding the Act of April 4, 2014.\(^\text{114}\) Supporters of the practice argue that fox penning remains primarily a training exercise that only incidentally and occasionally results in the quarry’s death.\(^\text{115}\) However, opponents draw analogies to animal fighting and—citing the reported replenishment rate—contend that penning is inherently violent.\(^\text{116}\)

In 2013, VDGIF adopted regulations imposing permit requirements on fox pen operators.\(^\text{117}\) Under the 2013 regulations, the enclosures must be fenced such that foxes and hounds cannot es-


\(^\text{113}\) See Springston, supra note 111; Gibson, supra note 111.

\(^\text{114}\) Springston, supra note 111; Gibson, supra note 111.

\(^\text{115}\) Maguire, supra note 112; Gibson, supra note 111.

\(^\text{116}\) See Maguire, supra note 112; Gibson, supra note 111.

cape, and must include at least one “escape structure” that “offer[s] foxes effective refuge from dogs.” The regulations also restricted the permitted number of hounds per acre (one dog per two acres), required operators to provide delivered foxes with an “acclimation” period, and imposed recordkeeping and reporting requirements. However, the regulations placed no limit on the number of foxes stocked per acre or delivered annually.

As introduced, Senate Bill 42 would have entirely prohibited fox pens; a violation would have constituted a Class 1 misdemeanor. The Senate Committee on Agriculture, Conservation and Natural Resources proposed a substitute bill that contained a grandfathering provision exempting pens holding a permit issued by VDGIF before 2014. Finally, the Senate Committee on Agriculture, Conservation and Natural Resources struck an uneasy compromise that limited the grandfathering provision to forty years and required VDGIF to adopt regulations restricting the number of foxes stocked annually and per acre. The regulations, which became effective on September 1, 2014, limit “the total number of foxes stocked annually in all preserves combined” to 900. In addition, VDGIF reserved the authority to determine annually the number of foxes stocked per acre in each pen.

118. Id. at 3464 (codified at 4 VA. ADMIN. CODE § 15-290-160(B)(4) & (5)).
119. Id. (codified at 4 VA. ADMIN. CODE § 15-290-160(B)(7)(a), (B)(8)(e), (B)(8)(g) & (B)(10)).
124. Id.
F. Consumer Protection, Puppy Protection: Bailey’s Law

The Humane Society of the United States has estimated that over two million puppies are born each year in large-scale commercial breeding facilities. Many of these facilities provide their animals with clean, suitable environments and regular, capable veterinary care. But too commonly, dogs in large-scale commercial breeding facilities are kept in near continual confinement without socialization, are provided minimal veterinary care, and are subject to deficient animal husbandry. Food and water are contaminated with feces and urine, wire cages that do not provide even enough space for the animal to stand or turn around injure paws and legs, and close quarters increase the risk and rate of illnesses including parvovirus, distemper, various respiratory infections, and parasitic afflictions. In these facilities, pejoratively called “puppy mills,” the physical suffering is immense. But the conditions also exact psychological tolls. A 2011 study captured the long-term behavioral and psychological effects of living in such conditions: breeding dogs rescued from large-scale breeding facilities exhibited significantly higher rates of fear and anxiety and significantly lower rates of “trainability” and energy than dogs from comparative populations, among other issues.

Animal welfare advocates—and many pet owners—attest that the trauma extends to the next generation. They contend that commercial breeders and brokers sell puppies with pre-existing health conditions (intestinal parasites, heartworms, distemper, parvovirus, skin disorders, respiratory infections, and congenital

125. 2012 USDA Breeder and Brokers Figures and Puppy Estimates, HUMANE SOC’Y OF THE U.S., www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy_mill_estimates_june2012.pdf (last visited Oct. 1, 2015). The OIG Audit Report states that there were 4,604 USDA licensed breeders (Class A licensees) and 1,116 USDA licensed brokers (Class B licensees) as of fiscal year 2008. OIG AUDIT REPORT, supra note 10, at 4. According to the Humane Society, USDA inventory counts indicate that the average large-scale operation keeps over eighty dogs on hand for breeding purposes. 2012 USDA Breeder and Brokers Figures, supra.

126. See HUMANE SOC’Y VETERINARY MED. ASS’N, VETERINARY REPORT ON PUPPY MILLS 1–2 (2013); OIG AUDIT REPORT, supra note 10, at 51 ex.C (listing the frequency and nature of documented violations).

127. VETERINARY REPORT ON PUPPY MILLS, supra note 126, at 5–7; see OIG AUDIT REPORT, supra note 10, at 10–14, 18–24.

defects like heart disease and hip dysplasia) to pet stores for resale.\textsuperscript{129} Further, a 2013 study found that puppies obtained from pet stores displayed significantly more behavioral problems than puppies obtained from non-commercial breeders.\textsuperscript{130}

For years, puppy mills avoided licensing and inspection requirements at the state level and took advantage of an exception in the federal Animal Welfare Act to avoid federal requirements.\textsuperscript{131} Moreover, as discussed in detail by the 2010 OIG Audit Report, federal enforcement of the Animal Welfare Act was generally ineffective. In 2010, the Office of the Inspector General is-

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\item \textsuperscript{129} VETERINARY REPORT ON PUPPY MILLS, supra note 126, at 7–8; Puppy Mill FAQ, AM. SOCY FOR THE PREVENTION OF CRUELTY TO ANIMALS, https://www.aspca.org/fight-cruelty/puppy-mills/puppy-mill-faq (last visited Oct. 1, 2015).
\item \textsuperscript{131} The regulations implementing the federal Animal Welfare Act provide that "breeders" who meet the regulatory definition of a "dealer" must obtain a Class A license. See 9 C.F.R. § 1.1 (2015). Similarly, a "broker" who arranges for the "purchase, sale, or transport of animals in commerce" and who also meets the regulatory definition of a "dealer" must obtain a Class B license. See id. The federal Animal Welfare Act exempts small business and retail pet stores from its licensing requirements, and the regulations formerly defined "retail pet store" as "any retail outlet where animals are sold only as pets at retail." See 7 U.S.C. §§ 2131–2134 (2012); 36 Fed. Reg. 24919 (Dec. 24, 1971). The Secretary of Agriculture interpreted its own definition to exempt persons who sell pets from their home or over the Internet directly to consumers, reasoning that such sellers "are already subject to a degree of self-regulation and oversight" by consumers. See Doris Day Animal League v. Veneman, 315 F.3d 297, 301 (D.C. Cir. 2003). But consequently, puppy mills could avoid federal licensing requirements by selling over the internet, and of course, internet consumers lack direct access to their sellers. See OIG AUDIT REPORT, supra note 10, at 36. In the absence of regular inspections and facility access, consumers had little assurance that their pets came from reputable commercial breeders and assumed greater risk of purchasing a puppy with behavior or health issues stemming from inhumane conditions. See id. at 36–37. In 2013, the Secretary of Agriculture amended the regulatory definition of "retail pet store" to close the loophole and exempt only "a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing . . . ." 78 Fed. Reg. 57277 (Sept. 18, 2013).
\end{itemize}
sued a report noting thousands of repeat offenders who received little to no penalty; instead, the USDA took an education-based approach to achieve compliance. \textsuperscript{132} Even to the extent that an education-based approach might have encouraged compliance, USDA inspectors failed to cite or properly document violations, which obscured repeated issues and weakened cases against problematic licensees.\textsuperscript{133}

To combat the proliferation of puppy mills within its own borders, the Commonwealth imposed its own licensing requirements in 2008 after the Humane Society and local authorities seized approximately 1000 dogs from one facility in Carroll County and conducted a raid on another facility in Independence. \textsuperscript{134} The 2008 act also provided that VDACS, the State Veterinarian, any animal control officer, and any public health or safety official may enter a facility to conduct an inspection or investigate a complaint without notice. \textsuperscript{135}

Not all states regulate commercial breeders, and those that do take a variety of approaches. \textsuperscript{136} In the absence of coordinated regulation, puppy mills continue to operate and continue to supply pet shops across the nation. Consequently, even after 2008 Acts

\textsuperscript{132} OIG AUDIT REPORT, supra note 10, at 1, 8–16.

\textsuperscript{133} Id. at 1–2, 17–24. Moreover, the agency misapplied its own guidelines, and it excessively reduced penalties even after Congress nearly "tripled the authorized maximum penalty" for violations of the Animal Welfare Act. Id. at 2, 28 (citing Pub. L. No. 110-246, 122 Stat. 1651, 2228 (codified at 7 U.S.C. § 2149(b) (2012)).


chapter 852, a Virginia consumer who purchased a puppy from a pet shop had no means to look beyond the pet store to the supplier, no means to ensure that the puppy came to the pet shop from a sanitary, humane environment, and thus risked purchasing a puppy at potentially greater risk of various, often life-threatening diseases. To promote transparency, and to encourage pet shops to obtain their animals from reputable breeders, the General Assembly enacted 2014 Acts chapter 448 (commonly referred to as “Bailey’s Law”), which required pet shops to disclose their sources and broadened the class of consumers with available remedies.

Bailey’s Law added a paragraph to Virginia Code section 3.2-6512 providing that:

A pet shop operating in the Commonwealth shall post in a conspicuous place on or near the cage of any dog or cat available for sale the breeder’s name, city, state, and USDA license number. A pet shop or a USDA licensed dealer who advertises any dog or cat for sale in the Commonwealth, including by Internet advertisement, shall provide prior to the time of sale the breeder’s name, city, state, and USDA license number.

Also, as Virginia Code section 3.2-6512 provided before the amendment, the Virginia Consumer Protection Act (“VCPA”) continues to protect consumers who purchased a dog or cat within the Commonwealth from “any pet dealer” who promises or represents “that the animal is registered or capable of being registered with any animal pedigree registry organization,” but fails to provide an animal history certificate. In effect, the new paragraph presses pet shops and dealers to provide history on all their ani-


Moreover, Bailey’s Law amended Virginia Code section 3.2-6514 to ensure that additional consumers, not just those who purchase an animal allegedly registered (or capable of being registered) with pedigree registry organizations, have a remedy in the event that a veterinarian certifies a newly purchased animal “unfit for purchase due to illness, a congenital defect . . . , or the presence of symptoms of a contagious or infectious disease.”

A new pet owner has ten days from receiving the animal to certify most health issues and qualify for relief under this section. Available remedies include (1) the right to return the animal and obtain a refund; (2) the right to return the animal and receive a new animal of equal value; or (3) if the animal was purchased from a pet shop or a USDA licensed dealer, the right to retain the animal and obtain reimbursement for the costs of veterinary care and certification “incurred up to the time the consumer notifies the pet dealer” that he or she wishes to keep the animal and up to the purchase price of the animal. Finally, pet dealers must provide consumers with notice of these remedies.

Despite high hopes for the law, a follow-up investigation conducted by the Humane Society of the United States concluded that Bailey’s Law failed to achieve the immediate effect its sponsors and supporters had sought. Humane society investigators visited eighteen pet shops in the Commonwealth and found that the majority of those pet shops were not complying with the disclosure requirements—the backbone of Bailey’s Law—and thereby were shifting the onus of investigation back onto consumers.

141. A “dealer” may include a pet shop, but it also refers to “any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barter companion animals” with some exceptions. VA. CODE ANN. § 3.2-6500 (Cum. Supp. 2015).
143. Id. The window extends to fourteen days from receipt in the event that the animal is afflicted with parvovirus. Id.
144. Id.
145. Id. (codified at VA. CODE ANN. § 3.2-6515) (Cum. Supp. 2015)).
147. Id. at 2. The report notes that employees often provided some information upon
The terms of Bailey's Law did not include an enforcement mechanism, and the cross-references between Bailey's Law and the VCPA appear inconsistent. Under Virginia Code section 3.2-6515, the amended required notice states that "[t]he sale of dogs and cats is subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.)."\textsuperscript{148} Previously, the required notice stated that only "[t]he sale of certain dogs and cats described as being registered or capable of being registered with any animal pedigree organization is subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.)."\textsuperscript{149} Read in isolation, the amended required notice would indicate that the sale of all dogs and cats is subject to the provisions of the VCPA. Bailey's Law also deleted similar language in Virginia Code section 3.2-6514.\textsuperscript{150} However, as noted above, Virginia Code section 3.2-6512 continues to provide only that it is a violation of the VCPA "to sell a dog or cat within the Commonwealth stating, promising, or representing that the animal is registered or capable of being registered with any animal pedigree registry organization, without providing the consumer with a pet dealer's animal history certificate..."\textsuperscript{151}

Further, while the amended notice would indicate that the sale of all dogs and cats is subject to the provisions of the VCPA, the VCPA provides only that violations of Virginia Code sections 3.2-6512, 3.2-6513, and 3.2-6516 constitute violations of the act. "Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter..."\textsuperscript{152} As noted above, the first paragraph of Virginia Code section 3.2-6512 continues to apply only to dogs or cats allegedly registered or capable of being registered with a pedigree registry organization.\textsuperscript{153} Similarly, Virginia Code section 3.2-6513 provides that including false or mis-

\textsuperscript{148} VA. CODE ANN. § 3.2-6515 (Cum. Supp. 2015).
\textsuperscript{149} Id. § 3.2-6515 (Repl. Vol. 2008) (emphasis added).
\textsuperscript{150} Id. § 3.2-6514 (Cum. Supp. 2015).
\textsuperscript{151} Id. § 3.2-6512 (Cum. Supp. 2015).
\textsuperscript{152} Id. § 59.1-200(A)(15) (Repl. Vol. 2014).
\textsuperscript{153} Id. § 3.2-6512 (Cum. Supp. 2015).
leading statements in the animal history certificate—required for dogs or cats allegedly registered or capable of being registered with a pedigree registry organization—violates the VCPA. Finally, Virginia Code section 3.2-6516 makes it a violation of the VCPA "for a pet dealer to state, promise, or represent that a dog or cat is registered or capable of being registered with any animal pedigree registry organization," but subsequently fail to register the animal or "provide the consumer with the documents necessary" to register the animal within 120 days of the sale.

Notwithstanding the broad cross-reference in Virginia Code section 59.1-200(A)(15) to Virginia Code section 3.2-6512, context supports the conclusion that only certain transactions involving dogs and cats are subject to the VCPA and the failure to post the disclosure required by Virginia Code section 3.2-6512 does not violate the VCPA. Accordingly, it seemed that pet shops could continue to procure dogs from alleged puppy mills and would continue to provide minimal information about the dogs' history. But in 2015, rather than rely on consumer pressure alone, the General Assembly took the direct track by enacting 2015 Acts chapter 679, which requires pet shops to procure their dogs from humane societies, public or private animal shelters, or persons who have not received from the U.S. Department of Agriculture, pursuant to enforcement of the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder, (i) a citation for a direct violation or citations for three or more indirect violations for at least two years prior to the procurement of the dog or (ii) two consecutive citations for no access to the facility prior to the procurement of the dog.

The act also imposes a two-year recordkeeping requirement for verification purposes and makes each violation of the section (aggregated according to each dog sold or offered for sale) a Class 1 misdemeanor. By prohibiting pet shops from purchasing dogs

154. Id. § 3.2-6513 (Repl. Vol. 2008).
155. Id. § 3.2-6516 (Repl. Vol. 2008).
156. Cf. id. § 59.1-200(A)(15) (Repl. Vol. 2014) ("Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers . . . .") (emphasis added).
158. Id. (codified at VA. CODE ANN. § 3.2-6511.1(C)-(D) (Cum. Supp. 2015)).
from facilities with recent direct violations or multiple recent indirect violations, the act seeks to occlude potentially problematic breeders from Virginia’s market.

II. A MODEST PROPOSAL: WELFARE LABELING

Part I of this article focused on companion animals, the Virginia laws protecting such animals and the property interests of their owners. Part II considers the welfare of the other class of domestic animals in Virginia: agricultural animals. For companion animals, the Animal Code establishes a baseline standard of care premised on “adequacy,” defined through various qualitative criteria.\(^\text{159}\) For agricultural animals, the Animal Code largely defers to the needs of “farming activities,” which include “the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding, exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals . . . .”\(^\text{160}\) Similarly, federal law provides welfare standards for agricultural animals only at distinct points of the production process, principally transportation (the “Twenty-Eight Hour Law”)\(^\text{161}\) and slaughter (the “Humane Methods of Slaughter Act”),\(^\text{162}\) leaving conditions on the farm largely unaddressed.\(^\text{163}\) In


\(^{160}\) Id. § 3.2-6500 (Cum. Supp. 2015); see id. § 3.2-6503.1 (Cum. Supp. 2015). A farming activity should be conducted “consistent with standard animal husbandry practices.” Id. § 3.2-6500 (Cum. Supp. 2015). Some states, such as New Jersey, have adopted criteria incorporating or referencing specific industry practices and academic research to normalize animal husbandry practices. See, e.g., N.J. ADMIN. CODE § 2:8-1.1 (2011). While such criteria may provide objective benchmarks against which to assess production methods, whether the criteria achieve “humane” standards depends on one’s perspective. See, e.g., N.J. Soc’y for Prevention of Cruelty to Animals v. N.J. Dep’t of Agric., 955 A.2d 886, 894–95 (N.J. 2008); Sean P. Sullivan, Empowering Market Regulation of Agricultural Animal Welfare Through Product Labeling, 19 ANIMAL L. 391, 393 (2013).

\(^{161}\) 49 U.S.C. § 80502 (2012). Under the Twenty-Eight Hour Law, a carrier may not confine an animal “in a vehicle or vessel for more than 28 consecutive hours without unloading the animal[] for feeding, water, and rest.” Id. § 80502(a)(1). USDA regulations provide feed rations and qualitative standards for watering and resting. See 9 C.F.R. §§ 89.1–89.5 (2015).


\(^{163}\) The federal Animal Welfare Act applies to companion animals and animals used “for research, testing, experimentation, or exhibition purposes . . . .” See 7 U.S.C. § 2132(g) (2012). It excludes farm animals from its protections. See id. § 2132(g)(3). The National
many ways, agricultural animals remain invisible until they more closely resemble something that we might find on a plate. But even if the law turns a blind eye to the lives of agricultural animals, consumers care about the welfare of the animals that become their food.\(^\text{164}\) They care because the manner of intensive, industrial farming associated with inhumane conditions raises animals that are less healthy, more likely to carry disease, and consequently more likely to adversely impact human health.\(^\text{165}\) They care because those same conditions can exact an immense toll on a vulnerable workforce.\(^\text{166}\) They care because industrial farming can contaminate waterbodies, degrade the land and air, and divide communities.\(^\text{167}\) They care for moral, ethical, and religious reasons.\(^\text{168}\)

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\(^\text{165}\) PEW COMM’N, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA 13–19 (2009) [hereinafter PUTTING MEAT ON THE TABLE] (describing how the scale and practices of industrial farming operations increase the risk of foodborne illnesses and pathogen transfer); see also DOUG GURIAN-SHERMAN, CAFOs UNCOVERED: THE UNTOLD COSTS OF CONFINED ANIMAL FEEDING OPERATIONS 62–63 (2008) [hereinafter CAFOs UNCOVERED] (describing how “the misuse and overuse of antibiotics in livestock operations” has contributed to the spread of antibiotic-resistant pathogens and foodborne illness).


\(^\text{167}\) PUTTING MEAT ON THE TABLE, supra note 165, at 23–29, 41–43; see also CAFOs UNCOVERED, supra note 165, at 61–62 (discussing the economic costs to rural communities); Natasha Geiling, The Unintended Consequences of North Carolina’s ‘Ag-Gag’ Law, THINK PROGRESS (June 7, 2015), http://thinkprogress.org/climate/2015/06/07/3666617/north-carolina-ag-gag-environmental-impacts/ (describing the environmental impacts of North Carolina’s hog industry).

\(^\text{168}\) See RONALD L. SANDLER, FOOD ETHICS: THE BASICS (2015); Jo Ann Davidson, World Religions and the Vegetarian Diet, 14 J. ADVENTIST THEOLOGICAL SOC’Y 114 (2003). A vast body of popular and scientific literature discussing modern industrial food production exists. For fairly extensive discussion and bibliographies, see Jonathan Safran Foer, Eating Animals and Michael Pollan, The Omnivore’s Dilemma: A Natural History of Four Meals. For a seminal work on factory farming, see Jim Mason & Peter Singer, Animal Factories.
Because consumers care, retailers have begun adopting welfare-conscious policies. Recently, Wal-Mart announced that it supports the Five Freedoms as an “aspiration” for its supply chain. Chipotle—which temporarily stopped serving pork in hundreds of locations in 2015 after a supplier failed to meet its standards—is among an enclave of young restaurant chains winning popularity in part through conveying welfare-conscious personas. Now, McDonald’s and other old-guard establishments are attempting to distance themselves from suppliers associated with inhumane practices.

Yet consumers have little way of knowing about the conditions in which their food is raised. Consumers often have little to no access to farms and effectively no way to trace the animal products on the shelf back to a particular farm, even if they did. In the supermarket and elsewhere, consumers find apparently endless variety, and the consumers who would like to purchase accord-


172. See Lisa Heinzerling, Reflections on Current Food and Drug Law Issues: The Varieties and Limits of Transparency in U.S. Food Law, 70 FOOD & DRUG L.J. 11, 20–21 (2015) (concluding that the legal system has failed to make our nation’s food systems transparent); cf. Sullivan, supra note 160, at 407. Sullivan argues that animal welfare is a “credence good,” as distinguished from “search goods” and “experience goods.” Id. at 407–08. Unlike search or experience goods, “credence goods are simply unobservable to consumers.” Id. at 409. Even farmer’s markets suffer from asymmetrical or inaccessible information. See Samuel R. Wiseman, Fraud in the Market, 26 REGENT U. L. REV. 367, 375–78 (2014).

ing to some ethos that places value on animal, environmental, and occupational welfare—to vote with their wallets for their values—must distinguish between products bearing labels with verdant fields, happy farmers, and animals in natural-looking environments.\textsuperscript{174} And what (or how much) meaning should they ascribe to those words streaming across the images from one package to the next: those words like "natural," "natural-raised," "fresh," "pasture-raised," "grassfed," "family farmed," and "organic"?\textsuperscript{175}

The regulatory apparatus governing what can appear on a label and directing what must appear on a label derives its authority from multiple federal laws and traverses the jurisdictional boundaries of federal agencies like the USDA, the Food and Drug Administration, and the Federal Trade Commission.\textsuperscript{176} The extensive apparatus preempts conflicting state law, ensuring a uniform system of labeling designed to produce information about the food stocked on the nation's shelves and convey it to consumers.\textsuperscript{177} But the purpose extends beyond requiring disclosure of nutritional

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facts and ingredients—it also strives to manage corporate messaging. Thus, the primary federal food laws generally prohibit “misbranding” or misleading representations. And the regulations implementing these laws achieve considerable precision when it comes to certain claims or required disclosures, including the name of a product.

When it comes to environmental, labor, or animal welfare claims, however, the apparatus largely withdraws, and the legal substance becomes less certain, leaving consumers to decipher any number of vague, barely distinguishable claims—modern palimpsests obscuring the history of our food. For instance, the term “cage-free” has no regulatory definition. It suggests that the producer raised the birds without cages, but it leaves open whether the birds had access to the outdoors and whether the birds were able to engage in normal behaviors, among other concerns. A claim that birds are raised “cage-free” is not necessarily independently verified, and in fact, the industry or a company may create a standard and ask the USDA to confirm that the standard has been met. But the USDA does require a producer

178. See Heinzerling, supra note 172, at 12.


181. See Heinzerling, supra note 172, at 20–21. Professor Heinzerling also comments on the limits of transparency elsewhere in our nation’s food law. In particular, she laments the apparent disinclination to collect information or conduct testing to verify nutritional and content claims. Id. at 16. She also explains the different approval processes used by the agencies and notes that sometimes the agencies may define (or not define) the same words differently. See id. at 18–19; see also A GUIDE TO FEDERAL FOOD LABELING, supra note 176, at 7.

182. See FOOD LABELING FOR DUMMIES, supra note 175, at 6.

183. See Ferdman, supra note 174 (“Some companies pay the USDA to verify that
to demonstrate to the agency that its “poultry has been allowed access to the outside” before it can use the terms “free range” and “free roaming.” As other commentators have noted, the definition of “free range” or “free roaming” applies only to poultry—not to cattle, pigs, or laying hens. Moreover, it does not address the range of living conditions or raising practices that would “allow[] access to the outside” with any precision. Conversely, to use the word “organic,” a producer must comply with fairly detailed specifications regulating production and handling processes that do prescribe certain living conditions and require independent third-party verification and certification.

In short, by casting light on a single corner, producers can hide the rest of the barn. Other commentators have raised these issues, explaining how such claims can be “bewilder[ing]” or misleading and how such claims may convey little to nothing and conceal considerably more. When I buy something labeled “organic,” I know it comes with the assurance of a certain standard of welfare and environmental sensitivity, even if the regulations implementing the National Organic Program are something of a baseline, permitting a range of practices more or less distinguishable from conventional industrial agriculture, and even though the certification does not wholly account for the social and environmental costs of production. But when I buy something “nat-

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186. See Sullivan, supra note 160, at 413 (noting that the “wide array of living conditions” that could satisfy certain standards makes it “difficult for a high-animal-welfare producer to effectively disclose” its practices to consumers).


"naturally raised," or "grassfed"—what do I know? Such claims imply sustainable practices, something akin to organic farming, but the claims lack even the degree of comprehensiveness that renders the "organic" claim relatively transparent. In short, these claims (and the pictures) provide little more than a marketing narrative. As a result, food labels bearing such claims fail to provide the information consumers need to recognize and distinguish between agricultural practices, develop informed preferences, and make purchases according to those preferences.

190. See Nicole E. Negowetti, Defining Natural Foods: The Search for a Natural Law, 26 REGENT U.L. REV. 329, 343 (2014) (noting that the Food and Drug Administration has repeatedly declined to define or standardize the term "natural"); see also Jennifer L. Pom eranz, Litigation to Address Misleading Food Label Claims and the Role of the State Attorneys General, 26 REGENT U.L. REV. 421, 438–40 (2014) (reviewing consumer-based litigation over the term "natural"). The USDA permits the use of the "natural" claim if the product "does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative . . . [and] the product and its ingredients are not more than minimally processed." U.S. DEP’T OF AGRIC., FOOD STANDARDS AND LABELING POLICY BOOK 108 (2005). Thus, "natural" refers to post-slaughter processing and includes no information regarding raising practices or environmental conditions. The definition is also somewhat flexible. See Product Labeling: Definition of the Term "Natural," 71 Fed. Reg. 70503, 70504 (Dec. 5, 2006) (citing Standards and Labeling Policy Memorandum 055 (Nov. 22, 1982)).

191. "Livestock used for the production of meat and meat products that have been raised entirely without growth promotants, antibiotics . . ., and have never been fed animal . . . byproducts derived from the slaughter/harvest processes . . ." United States Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived From Such Livestock, 74 Fed. Reg. 3541, 3545 (Jan. 21, 2009). Producers can validate a "naturally raised" claim through an audit procedure conducted by the USDA. Id. at 3541; see 7 C.F.R. pt. 62 (2015).

192. "Grass and forage shall be the feed source consumed for the lifetime of the ruminant animal . . . Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season." United States Standards for Livestock and Meat Marketing Claims, Grass (Forage) Fed Claim for Ruminant Livestock and the Meat Products Derived From Such Livestock, 72 Fed. Reg. 58631, 58637 (Oct. 16, 2007). The producer may supplement the grass-based diet with "non-forage feedstuffs" to accommodate "environmental or physical conditions" and "to ensure the animal's well being," provided that such supplementation is documented. Id. Producers can validate the "grass-fed" claim through the USDA's audit procedure. Id. at 58631; see 7 C.F.R. pt. 62 (2015). As with the "free range" claim, the definition does not address the range of raising practices and living conditions that permit "continuous access to pasture." An independent, third-party certification program operated by the American Grassfed Association provides more substance to the claim, requiring all livestock to live on land with at least 75% forage cover or unbroken ground. See AM. GRASSFED ASS'N, GRASSFED & GRASS PASTURED RUMINANT STANDARDS 4 (2015). As a result, consumers must distinguish between USDA grassfed products and American Grassfed Association products to understand the scope of the claim.

193. Pollan refers to the narrative as "Supermarket Pastoral." POLLAN, supra note 168, at 137.

194. See Byrne, supra note 188, at 418–19; see also Sullivan, supra note 160, at 413.
In 2008, the USDA acknowledged that the same “claim may reflect different animal raising practices, depending on how an animal producer or certifying entity defines the basis for the claim.” It further acknowledged that such claims “can be difficult... to address through its pre-market label approval process,” and that it often lacks sufficient information to evaluate production practices. The agency also recognized that the use of such claims is important for consumers, who want transparency, and for producers, who want to differentiate their products from other apparently similar products in the supermarket. Despite its awareness of the issue, the USDA has yet to take regulatory action. At this stage, states could regulate production claims without conflicting with federal law, and one could argue that regulation of these claims falls outside the labeling authority of the USDA or FDA in any case.

This article does not propose that Virginia should regulate the use of production claims on its own, independent of the other fifty states. Rather, this article proposes a Virginia-oriented production label; one that would be of value to Virginia consumers who seek transparency and to Virginia producers that want to differentiate their products from others in the market. The program would be voluntary, and Virginia producers would apply for certification and the right to use the label on their packaging. As a Virginia-oriented production label, it could build from VDACS’ successful “Virginia Grown” and “Virginia’s Finest” marketing

196. Id.
197. See id.
200. A number of third-party welfare certification programs with defined standards (Animal Welfare Approved, Certified Humane, Global Animal Partnership, and American Humane Certified) exist on the national market. See, e.g., Comprehensive Standards Comparison Chart, supra note 175. The standards for these programs vary, and consumers must be able distinguish between these “credible” claims and non-credible claims. See Sullivan, supra note 160, at 411–12. A Virginia label would be distinctive and come with the imprimatur of state authority.
campaigns and certify that purchases support both a certain method of farming and local producers. 201

The recently discontinued “Virginia Quality” label provides something of a model for the necessary legislation. 202 Virginia Code section 3.2-4313 authorizes VDACS to stamp any qualified agricultural products with a distinctive label, which indicated that the product had been subject to “continuous official inspection” and met the “quality and description” shown on the packaging. 203 The Virginia Code further authorized VDACS to adopt regulations permitting “any producer” to use the label on its qualified products. 204 Similar legislation would be required to authorize VDACS to adopt regulations establishing standards for the proposed label. 205

To be most effective, and to differentiate itself from existing welfare claims or certification programs, a Virginia label should signify precise environmental and labor standards in addition to animal welfare standards. 206 The standards should be science-based, developed in consultation with veterinary, agricultural and environmental scientists, non-governmental organizations, and other stakeholders, and the standards should be quantitative

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202. See Regulations Establishing the Virginia Quality Label (Fast-Track), 29 Va. Reg. Regs. 2197 (May 6, 2013) (to be codified at 2 VA. ADMIN. CODE 5-260). The label had not been used by the agency or by producers in several years. Id.


204. Id. §§ 3.2-4316, -4320 (Repl. Vol. 2008). The General Assembly authorized VDACS to seek injunctions restraining the improper use of the label and made misuse of the label a Class 3 misdemeanor. Id. §§ 3.2-4318, -4321 (Repl. Vol. 2008).

205. The discontinued Virginia Quality label indicated that an agricultural or food product passed through “continuous official inspection.” Id. § 3.2-4313 (Repl. Vol. 2008); see id. § 3.2-4312 (Repl. Vol. 2008) (defining “continuous official inspection”). That purpose is distinguishable from the proposed label, which would condense and convey information beyond product grades and description. The popularity of the Virginia Grown and Virginia’s Finest campaigns demonstrate industry interest in distinguishing their products as “local,” and consumer interest in finding local products. The proposed label would go even further by indicating local products that adhere to superior animal raising, environmental, and labor standards.

206. To develop and incorporate environmental and labor standards, the Commissioner could consult with the Virginia Department of Environmental Quality and the Virginia Department of Labor and Industry.
when feasible. To the extent that qualitative standards are adopted, such standards must describe the acceptable range of conditions that will support compliance. The adopted standards should be summarized and explained on the VDACS website for consumer education. Ultimately, the aim of the program is to acknowledge and confront the externalities of food production, so that a framework for innovative, sustainable practices can develop through market-based interactions between the consumer and the producer.

Further, day-to-day operations must be verified against the standards, either by VDACS itself or by a third-party. Verification should consist of annual and random unannounced inspections to build credibility and consumer confidence, and to ensure that producers cannot undercut their peers by obtaining certification while avoiding the cost of compliance. The results of inspections should be made public, accessible through the VDACS website. If a certified producer fails to take corrective action, or fails to meet the program’s requirements, their right to use the label would be suspended and then terminated if issues persist. The program could also encourage the producers to cultivate transparency and self-verify through alternative means, such as casting live video of operations on farm websites or permitting the public to tour farm facilities.

207. A label could describe certain “levels” of certification or achievement (i.e., Producer X meets 85% of the standards and receives a score of “1,” while Producer Y meets 100% of the standards and receives a score of “5.”), thereby permitting consumers to select a level and corresponding price point. In a tiered program, a minimum bar for basic certification would be required.


209. The inspections might also produce information about best practices that would benefit the industry generally. Cf. Heinzerling, supra note 172, at 21 & n.91.

210. A criminal provision, such as that contained in the Virginia Quality program, would likely discourage producers from applying for the label in the first instance and be counterproductive as a result.

211. See Sullivan, supra note 160, at 411–12. Alternative verification methods such as those above could be particularly important victories for transparency in light of industry-sponsored “ag-gag” bills, which often criminalize efforts to expose objectionable or unlawful operations. See Heinzerling, supra note 172, at 21 & n.92.
Agriculture in Virginia is big business. Consumers want sustainable food products that they can believe in. Virginia can help its local producers fill a void in the marketplace by developing a transparent certification program that brings consumers and Virginia producers together. In doing so, Virginia can advance a new era of agricultural policy—one that invites consumers beyond the shelf and attempts to address the ethical, social, and environmental concerns associated with food production instead of burying those issues beneath well-crafted claims.

CONCLUSION

This survey has attempted to identify connections between animal law and other disciplines to illustrate its potential to positively impact Virginia communities. Virginia policymakers have generally been on the forefront of developments in animal law, implementing progressive strategies to combat animal cruelty and introducing strategies to integrate animal law with other disciplines. Further, the growing interest and concern of consumers with the welfare of animals may offer small Virginia producers an opportunity to distinguish their products, provided a coherent and credible system for identifying sustainable products can be developed. Since 2008, animal law has taken an increasingly visible place in Virginia politics, a trend likely to continue in the coming years.