

## 2013 FEDERAL LEGISLATIVE REVIEW

By  
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I. INTRODUCTION .....	433
II. BEES .....	435
III. KING AMENDMENT TO THE FARM BILL .....	436
IV. ANIMALS IN RESEARCH .....	438
A. <i>Safe Cosmetics and Personal Care Products Act of 2013</i> .	438
B. <i>Pet Safety and Protection Act of 2013</i> .....	440
V. WILDLIFE .....	442
A. <i>Endangered Species Management Self-Determination</i> <i>Act</i> .....	442
B. <i>Endangered Species Improvement Act of 2014</i> .....	444
C. <i>Big Cats and Public Safety Protection Act</i> .....	445
D. <i>Wildlife Veterinarians Employment and Training Act of</i> <i>2013</i> .....	446
VI. COMPANION ANIMALS .....	447
A. <i>Puppy Uniform Protection and Safety Act</i> .....	447
B. <i>Pets on Trains Act of 2013</i> .....	449
C. <i>Resolution Expressing Support for National Animal</i> <i>Rescue Day</i> .....	451

### I. INTRODUCTION

President Harry Truman labeled the 80th Congress the “do-nothing Congress” for enacting only 906 public laws.<sup>1</sup> If enacting 906 laws is considered doing nothing, it is difficult to imagine how President Truman would label the 113th Congress. In its first session, the 113th Congress enacted only 65 public laws.<sup>2</sup>

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<sup>1</sup> Harry S. Truman, Speech, *Remarks in New Jersey* (Elizabeth, N.J. Oct. 7, 1948) (transcript available at <http://www.trumanlibrary.org/publicpapers/index.php?pid=1977> [<http://perma.cc/F7BC-877Z>] (accessed Apr. 13, 2014)); *Résumé of Congressional Activity*, 94 Cong. Rec. D537 (daily dig. Dec. 31, 1948) (available at <http://www.senate.gov/reference/resources/pdf/80res.pdf> [<http://perma.cc/4XP5-5G9A>] (accessed Apr. 13, 2014)) (reflecting a total of 906 public bills enacted into law during the two legislative sessions of the 80th Congress).

<sup>2</sup> *Résumé of Congressional Activity*, 160 Cong. Rec. D13 (daily dig. Jan. 6, 2014) (available at [http://www.senate.gov/reference/resources/pdf/Resumes/113\\_1.pdf](http://www.senate.gov/reference/resources/pdf/Resumes/113_1.pdf) [<http://perma.cc/QVM4-BGL8>] (accessed Apr. 13, 2014)) (reflecting a total of sixty-five public

In October 2013, the 113th Congress had the longest federal government shutdown in United States (U.S.) history, spanning sixteen days and costing an estimated \$2 billion to \$6 billion in lost gross domestic product (GDP) output in the fourth quarter.<sup>3</sup> Close to 800,000 federal workers were furloughed without pay, while members of Congress continued to receive pay.<sup>4</sup> According to a recent Gallup poll, just prior to the shutdown in September 2013, this Congress received its highest monthly approval rating for the year at 19%.<sup>5</sup> Following the shutdown in November 2013, the approval rating dropped to 9%, Congress's lowest for the year.<sup>6</sup> On average, only 14% of Americans surveyed approved of the way Congress was handling its job<sup>7</sup>—the lowest job approval rating in Gallup history.<sup>8</sup>

Upon reconvening after the shutdown, Congress enacted its first bill addressing animal welfare. However, the bill was not explicitly animal related; rather, it was a spending bill—the Consolidated Appropriations Act of 2014.<sup>9</sup> The Act prohibits horse-slaughter facilities in the U.S. by disallowing the use of funds for salaries and expenses of personnel in inspecting horses under the Federal Meat Inspection Act.<sup>10</sup> The Act passed both houses of Congress and was signed into law by President Obama on January 17, 2014.<sup>11</sup> However, it is not likely that this Congress will pass many additional laws protecting animals during its second session. Much of the animal-related legislation introduced thus far is a reintroduction of previous bills that were never enacted. Congress has referred the majority of animal-related legislation to committees and has taken no further actions on these bills.

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bills enacted into law during the first legislative session of the 113th Congress); Drew DeSilver, Pew Research Ctr., *Congress Ends Least-Productive Year in Recent History*, <http://www.pewresearch.org/fact-tank/2013/12/23/congress-ends-least-productive-year-in-recent-history/> [<http://perma.cc/3SMX-9UBQ>] (Dec. 23, 2013) (accessed Apr. 13, 2014).

<sup>3</sup> Exec. Off. of the Pres., Off. of Mgt. & Budget, *Impacts and Costs of the October 2013 Federal Government Shutdown* 4, 8 (Nov. 2013) (available at <http://www.whitehouse.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf> [<http://perma.cc/NJ7M-HG2Q>] (accessed Apr. 13, 2014)).

<sup>4</sup> Stephanie Condon, CBS News, *Government Shutdown: Is Congress Acting Selfishly?*, <http://www.cbsnews.com/news/government-shutdown-is-congress-acting-selfishly> [<http://perma.cc/Q2S3-XL88>] (Oct. 2, 2013) (accessed Apr. 13, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Frank Newport, Gallup News Serv., *Congress Job Approval Drops to All-Time Low for 2013*, <http://www.gallup.com/poll/166196/congress-job-approval-drops-time-low-2013.aspx> [<http://perma.cc/N5VU-E7D3>] (Dec. 10, 2013) (accessed Apr. 13, 2014).

<sup>9</sup> H.R. 3547, 113th Congress (Jan. 15, 2014) (enrolled bill) (available at <http://beta.congress.gov/113/bills/hr3547/BILLS-113hr3547enr.pdf> [<http://perma.cc/9FM6-KW4R>] (accessed Apr. 13, 2014)) (enacted).

<sup>10</sup> *Id.* at § 745(1).

<sup>11</sup> Lib. Cong., Congress.gov, *H.R.3547—Consolidated Appropriations Act, 2014*, <http://beta.congress.gov/bill/113th-congress/house-bill/3547/actions> [<http://perma.cc/LH Y8-NNDU>] (accessed Apr. 13, 2014).

## II. BEES

Threats to bees have garnered national attention over the past year. Honeybees are responsible for pollinating—either directly or indirectly—about one in three mouthfuls of the U.S. diet.<sup>12</sup> Beekeepers have faced unexplained losses in their colonies, some reporting losses of 30% to 90% of their hives beginning in October 2006.<sup>13</sup> These unexplained losses are known as Colony Collapse Disorder (CCD).<sup>14</sup> CCD's main symptom is “very low or no adult honeybees present in the hive, but with a live queen and no dead honeybee bodies present.”<sup>15</sup> While researchers have not identified a cause of CCD yet, one suspected contributing cause is the pesticide class neonicotinoids.<sup>16</sup>

One recent incident of bees dying at alarming rates due to pesticides occurred in June 2013, when shoppers at a Target department store in Wilsonville, Oregon discovered mass quantities of dead bumblebees in the parking lot.<sup>17</sup> Over 50,000 bees died, making this the largest native bee kill ever recorded.<sup>18</sup> A landscaping company had treated linden trees around the parking lot with the pesticide dinotefuran, which is sold under the trade name Safari.<sup>19</sup> The Oregon Department of Agriculture investigated the incident and confirmed that the deaths were directly related to an application of this pesticide.<sup>20</sup> Safari belongs to the neonicotinoid class of insecticides,<sup>21</sup> which are systemic chemicals that are absorbed into plant tissue, making the

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<sup>12</sup> U.S. Dept. of Agric., Agric. Research Serv., *Honey Bees and Colony Collapse Disorder*, <http://ars.usda.gov/news/docs.htm?docid=15572> [<http://perma.cc/DEH3-E2DF>] (updated Dec. 2, 2013) (accessed Apr. 13, 2014).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Press Release, Xerces Socy. for Invertebrate Conservation, *Pesticide Causes Largest Mass Bumble Bee Death on Record* (June 21, 2013) (available at <http://www.xerces.org/2013/06/21/pesticide-causes-largest-mass-bumble-bee-death-on-record> [<http://perma.cc/9FCV-44XZ>] (accessed Apr. 13, 2014)).

<sup>18</sup> Xerces Socy. for Invertebrate Conservation, *The Wilsonville Bee Kill*, <http://www.xerces.org/the-wilsonville-bee-kill> [<http://perma.cc/D3G-CEYL>] (accessed Apr. 13, 2014). In a tragic coincidence, the bee deaths occurred during National Pollinator Week. *Id.*

<sup>19</sup> Xerces Socy., *Mass Bumble Bee Death*, *supra* n. 17.

<sup>20</sup> *Id.* Ironically, the company that manufactures Safari is a sponsor of National Pollinator Week. Xerces Socy., *Wilsonville Bee Kill*, *supra* n. 18.

<sup>21</sup> Xerces Socy., *Mass Bumble Bee Death*, *supra* n. 17; *see e.g.* Christian H. Krupke et al., *Multiple Routes of Pesticide Exposure for Honey Bees Living Near Agricultural Fields*, 7 PLoS ONE e29268, 1–3 (Jan. 3, 2012), <http://www.plosone.org/article/fetch-Object.action?uri=info%3Adoi%2F10.1371%2Fjournal.pone.0029268&representation=PDF> [<http://perma.cc/UAV6-4Q72>] (accessed Apr. 13, 2014) (study finding neonicotinoid residues on dead and dying bees and discussing potential paths of agriculturally related neonicotinoid exposure).

plants toxic to insects.<sup>22</sup> The chemicals can be highly toxic to bees because they are long lasting and can be present in pollen and nectar.<sup>23</sup>

A month after the Wilsonville bee deaths on July 16, 2013, Representatives John Conyers Jr. (D-Mich.) and Earl Blumenauer (D-Or.) introduced H.R. 2692, the Saving America's Pollinators Act of 2013.<sup>24</sup> As introduced, the bill would require the Environmental Protection Agency (EPA) to suspend the use of dinotafuran and other neonicotinoid insecticides until the EPA determines that the insecticides will not cause unreasonable adverse effects on pollinators.<sup>25</sup> H.R. 2692 was referred to the House Subcommittee on Horticulture, Research, Biotechnology, and Foreign Agriculture on August 13, 2013.<sup>26</sup> The House has taken no action on the bill since referral to the subcommittee.<sup>27</sup> GovTrack, a non-profit legislation tracking website, predicts that H.R. 2692 has no chance of being enacted because it fits a profile associated with unsuccessful bills.<sup>28</sup> The bill was introduced in the first year of the Congress, the sponsor is a member of the minority party, and the bill was referred to House Agriculture—factors which, taken together, weigh against the bill's success.<sup>29</sup>

### III. KING AMENDMENT TO THE FARM BILL

The Farm Bill is the popular title of H.R. 2642, the Agricultural Act of 2014.<sup>30</sup> Representative Frank Lucas (R-Okla.) introduced the Farm Bill on July 10, 2013.<sup>31</sup> The following day, the Farm Bill passed

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<sup>22</sup> Xerces Socy., *Wilsonville Bee Kill*, *supra* n. 18.

<sup>23</sup> *Id.*

<sup>24</sup> H.R. 2692, 113th Cong. (July 16, 2013) (available at <http://beta.congress.gov/113/bills/hr2692/BILLS-113hr2692ih.pdf> [<http://perma.cc/3ABY-XV8N>] (accessed Apr. 13, 2014)); Cassandra Profita, Or. Pub. Broad., *Blumenauer Wants to Suspend Bee-Killing Pesticide*, <http://www.opb.org/news/article/blumenauer-wants-to-suspend-bee-killing-pesticide/> [<http://perma.cc/8QH3-3WDJ>] (July 12, 2013) (accessed Apr. 13, 2014). Representative Blumenauer is the co-founder and co-chair of the Congressional Pollinators Caucus and has long sought protections for bees. Press Release, Xerces Socy. for Invertebrate Conservation, *Blumenauer, Conyers Introduce Save America's Pollinators Act* (July 16, 2013) (available at <http://www.xerces.org/2013/08/07/blumenauer-conyers-introduce-save-americas-pollinator-act/> [<http://perma.cc/5RFN-A36Z>] (accessed Apr. 13, 2014)).

<sup>25</sup> H.R. 2692, 113th Cong. at § 3.

<sup>26</sup> Lib. Cong., Congress.gov, *H.R. 2692—Saving America's Pollinators Act of 2013*, <http://beta.congress.gov/bill/113th-congress/house-bill/2692/> [<http://perma.cc/X6DV-WNBX>] (accessed Apr. 13, 2014).

<sup>27</sup> *Id.*

<sup>28</sup> GovTrack.us, *H.R. 2692: Saving America's Pollinators Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr2692>; scroll down to Prognosis, select show factors (accessed Apr. 13, 2014).

<sup>29</sup> *Id.*

<sup>30</sup> Lib. Cong., Congress.gov, *H.R. 2642—Agricultural Act of 2014*, <http://beta.congress.gov/bill/113th/house-bill/2642/> [<http://perma.cc/63UU-RFGY>] (accessed Apr. 13, 2014).

<sup>31</sup> H.R. 2642, 113th Cong. (July 10, 2013) (as introduced) (available at <http://beta.congress.gov/113/bills/hr2642/BILLS-113hr2642ih.pdf> [<http://perma.cc/Z4UU-H3W4>] (accessed Apr. 13, 2014)).

the House by a narrow margin of 216–208.<sup>32</sup> The Senate passed the Farm Bill with an amendment on July 18, 2013.<sup>33</sup> The two bills were resolved in conference, and President Obama signed the resolved Act into law on February 7, 2014.<sup>34</sup>

During deliberations on the Farm Bill, the animal welfare community was concerned with an amendment proposed by Representative Steve King (R-Iowa). King is notorious for his indifference to dog fighting and lack of sympathy for animal rights activists.<sup>35</sup> King’s proposed amendment to the Farm Bill was titled “Prohibition against Interference by State and Local Governments with Production or Manufacture of Items in Other States.”<sup>36</sup> The controversial part of the amendment stated:

[T]he government of a state or locality therein shall not impose a standard or condition on the production or manufacture of any agricultural product sold or offered for sale in interstate commerce if—

- (1) such production or manufacture occurs in another State; and
- (2) the standard or condition is in addition to the standards and conditions applicable to such production or manufacture pursuant to—

- (A) Federal law; and
- (B) the laws of the State and locality in which such production or manufacture occurs.<sup>37</sup>

To the animal welfare community, the King amendment was controversial because it could have negated most state and local laws governing the production or manufacture of agricultural products.<sup>38</sup> Examples of the state animal welfare laws that could have been in jeopardy include those regulating intensive confinement of farm animals and horse slaughter, and those banning the sale of foie gras and

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<sup>32</sup> Lib. Cong., Congress.gov, *H.R. 2642—Agricultural Act of 2014*, <http://beta.congress.gov/bill/113th/house-bill/2642/actions> [<http://perma.cc/6MJX-43B5>] (accessed Apr. 13, 2014). None of the House Democrats voted for the bill; only twelve House Republicans voted against the bill. Off. of the Clerk, H.R., *Final Vote Results for Roll Call 353* (available at <http://clerk.house.gov/evs/2013/roll353.xml>) [<http://perma.cc/Q6UE-KQKU>] (accessed Apr. 13, 2014).

<sup>33</sup> Lib. Cong., Congress.gov, *H.R. 2642—Agricultural Act of 2014*, <http://beta.congress.gov/bill/113th/house-bill/2642/actions> [<http://perma.cc/6MJX-43B5>] (accessed Apr. 13, 2014).

<sup>34</sup> *Id.*

<sup>35</sup> Wash. Post Editorial Bd., *An Amendment That Hurts Chickens—and Americans*, [http://www.washingtonpost.com/opinions/mr-kings-farm-bill-amendment-hurt-chickens-and-americans/2013/08/25/f24aa1dc-0b36-11e3-8974-f97ab3b3c677\\_story.html](http://www.washingtonpost.com/opinions/mr-kings-farm-bill-amendment-hurt-chickens-and-americans/2013/08/25/f24aa1dc-0b36-11e3-8974-f97ab3b3c677_story.html) [<http://perma.cc/ZJ5H-QWVG>] (Aug. 25, 2013) (accessed Apr. 13, 2014).

<sup>36</sup> H.R. 2642, 113th Cong. § 12312 (Sept. 28, 2013) (engrossed amendment House) (available at <http://beta.congress.gov/113/bills/hr2642/BILLS-113hr2642eah.pdf>) [<http://perma.cc/PTE3-Z5NJ>] (accessed Apr. 13, 2014).

<sup>37</sup> *Id.* at § 12312(a).

<sup>38</sup> Humane Socy. of the U.S., *The King Amendment*, [http://www.humanesociety.org/issues/confinement\\_farm/king-amendment.html](http://www.humanesociety.org/issues/confinement_farm/king-amendment.html) [<http://perma.cc/8D2H-QH8K>] (Feb. 4, 2014) (accessed Apr. 13, 2014).

commerce in and possession of shark fins.<sup>39</sup> In addition to jeopardizing many animal welfare laws, the King amendment could have upended laws regarding child labor, food safety, labeling, and environmental requirements.<sup>40</sup>

King's motivation for the amendment was to target a California law barring the sale of eggs produced under conditions cruel to hens.<sup>41</sup> California's Proposition 2 prohibits the confinement of any farm animal in a manner that prevents it from "lying down, standing up, and fully extending his or her limbs" and "[t]urning around freely."<sup>42</sup> King disparaged the law for forcing producers to spend billions to meet California's production standards.<sup>43</sup> Through his amendment, King aimed to block animal welfare organizations from "creating a network of restrictive state laws that will slowly push agricultural production towards the demise."<sup>44</sup>

A wide variety of organizations—in addition to animal welfare organizations—publicly opposed the King amendment. These organizations ranged from agriculture and food processing groups to newspapers and groups concerned about food safety, public health, or civil rights.<sup>45</sup> Congress ultimately passed the Farm Bill without the King amendment.<sup>46</sup>

#### IV. ANIMALS IN RESEARCH

##### A. *Safe Cosmetics and Personal Care Products Act of 2013*

The welfare of laboratory animals in the U.S. lags behind the welfare of laboratory animals in other nations. In 2013, other parts of the world were active in banning animal testing. For example, the Euro-

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<sup>39</sup> Humane Socy. of the U.S., *Oppose the King Amendment to the Farm Bill* (available at <http://www.humanesociety.org/assets/pdfs/legislation/king-amendment-fact-sheet.pdf> [<http://perma.cc/7QYX-D6LY>] (accessed Apr. 13, 2014)).

<sup>40</sup> *Id.*

<sup>41</sup> Wash. Post Editorial Bd., *supra* n. 35.

<sup>42</sup> Cal. Health & Safety Code § 25990 (2008).

<sup>43</sup> Wash. Post Editorial Bd., *supra* n. 35.

<sup>44</sup> Press Release, Off. of Congressman Steve King, *King's Two Amendments Included in Farm Bill* (May 15, 2013) (available at <http://steveking.house.gov/media-center/press-releases/kings-two-amendments-included-in-farm-bill> [<http://perma.cc/Q5LR-Z8PK>] (accessed Apr. 13, 2014)) (quoting Representative King).

<sup>45</sup> Humane Socy. of the U.S., *Compendium of Publicly Stated Opposition to Rep. Steve King's Farm Bill Amendment* (available at <http://www.humanesociety.org/assets/pdfs/legislation/king-amendment-opposition-master.pdf> [<http://perma.cc/NS88-D7K9>] (updated Jan. 23, 2014) (accessed Apr. 13, 2014)).

<sup>46</sup> H.R. 2642, 113th Cong. (Feb. 5, 2014) (enacted) (available at <http://beta.congress.gov/113/bills/hr2642/BILLS-113hr2642enr.pdf> [<http://perma.cc/J36D-VYNT>] (accessed Apr. 13, 2014)); *see* 160 Cong. Rec. H1423 (daily ed. Jan. 27, 2014) (available at <http://beta.congress.gov/crec/2014/01/27/CREC-2014-01-27.pdf> [<http://perma.cc/CTG7-B36M>] (accessed Apr. 13, 2014)) (noting the "House bill prohibits any state or local government from setting standards or conditions on the production or manufacture of agricultural products," the "Senate amendment contains no comparable provision," and the "Conference substitute adopts the Senate provision").

pean Union (EU) implemented a complete ban on cosmetics testing on March 11, 2013.<sup>47</sup> A company selling cosmetics in the EU can no longer carry out new animal tests for cosmetics purposes.<sup>48</sup> In June 2013, India became the first country in South Asia to ban animal testing for cosmetics and their ingredients.<sup>49</sup> The Legislative Assembly of Sao Paulo in Brazil also recently passed a bill banning animal testing for cosmetic products, personal care products, perfumes, and their ingredients.<sup>50</sup> South Korea<sup>51</sup> and China<sup>52</sup> also took steps toward utilizing and developing cosmetics testing alternatives.

So far, the U.S. is not willing to ban cosmetics testing on animals altogether, but may be willing to minimize such testing. Representative Janice Schakowsky (D-Ill.) introduced the Safe Cosmetics and Personal Care Products Act of 2013, H.R. 1385, on March 21, 2013.<sup>53</sup> While the “safe” in the title of the Act mainly refers to safety of humans using cosmetics, one section of the Act deals with animal testing alternatives.<sup>54</sup> In order to minimize the use of animal testing of ingredients and cosmetics, the Act would require the use of alternative testing methods that (1) “do not involve the use of an animal to test the chemical substance;” (2) “provide information that is equivalent or superior in scientific quality to the animal testing method;” and (3) “use fewer animals than conventional animal-based tests when nonanimal

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<sup>47</sup> European Commn., *Communication from the Commission to the European Parliament and the Council on the Animal Testing and Marketing Ban and on the State of Play in Relation to Alternative Methods in the Field of Cosmetics* 3, 13 (Mar. 11, 2013) (available at [http://ec.europa.eu/consumers/sectors/cosmetics/files/pdf/animal\\_testing/com\\_at\\_2013\\_en.pdf](http://ec.europa.eu/consumers/sectors/cosmetics/files/pdf/animal_testing/com_at_2013_en.pdf) [<http://perma.cc/M59F-ZPN6>] (accessed Apr. 13, 2014)).

<sup>48</sup> *Id.* at 3.

<sup>49</sup> Aarti Dhar, The Hindu, *India Bans Testing of Cosmetics on Animals*, <http://www.thehindu.com/news/national/india-bans-testing-of-cosmetics-on-animals/article4860969.ece> [<http://perma.cc/JUZ9-QSGS>] (updated June 29, 2013) (accessed Apr. 13, 2014).

<sup>50</sup> Agence France-Presse, *Brazil's Sao Paulo State Bans Animal Testing*, <https://uk.news.yahoo.com/brazil-39-sao-paulo-state-bans-animal-testing-213308505.html> [<http://perma.cc/9M8P-A9M2>] (Jan. 23, 2014) (accessed Apr. 13, 2014).

<sup>51</sup> Ctr. of Alt. Methods for Safety Evaluation of Cosmetics, *CAMSEC Symposium Invitation* (2013) (available at [http://www.kcii.re.kr/\\_UploadFiles/NEWS/\(붙임4\)홍보\\_리플렛.pdf](http://www.kcii.re.kr/_UploadFiles/NEWS/(붙임4)홍보_리플렛.pdf) [<http://perma.cc/8QEA-KL59>] (accessed Apr. 13, 2014)) (“The Center of Alternative Methods for Safety Evaluation of Cosmetics (CAMSEC) was founded this year to develop reliable new alternative test methods for animal experiments[, and] . . . is currently sponsored by the Ministry of Food and Drug Safety.”).

<sup>52</sup> Zhang Dayu, CNN, *China Considers End to Mandatory Animal Testing on Cosmetics*, <http://www.cnn.com/2013/11/15/world/asia/china-cosmetics-testing/> [<http://perma.cc/C55M-W9SY>] (updated Nov. 15, 2013) (accessed Apr. 13, 2014). For further discussion of potential changes to Chinese regulations regarding animal toxicological testing, see King & Wood Mallesons, China Bull., *Rabbits Rejoice—End of PRC Animal Testing Requirements Nears*, <http://www.kingandwood.com/bulletin.aspx?id=china-bulletin-February-2014&language=en> [<http://perma.cc/8NHS-6XQX>] (Feb. 2014) (accessed Apr. 13, 2014).

<sup>53</sup> H.R. 1385, 113th Cong. (Mar. 21, 2013) (available at <http://beta.congress.gov/113/bills/hr1385/BILLS-113hr1385ih.pdf> [<http://perma.cc/J4QN-EZQA>] (accessed Apr. 13, 2014)).

<sup>54</sup> *Id.* at § 2.

tests are impracticable . . . .”<sup>55</sup> The Act would also encourage the formation of industry consortia to avoid duplication of tests, and funding for research and validation of alternative test methods.<sup>56</sup>

It is unlikely that Congress will enact H.R. 1385. The last action taken was on July 8, 2013, when the bill was referred to the Subcommittee on Workforce Protections.<sup>57</sup> Two previous versions of the bill, the Safe Cosmetics Act of 2010 and the Safe Cosmetics Act of 2011, never made it out of committee.<sup>58</sup> The partisan sponsorship of the current Act does not help its chances of being passed either. All sponsors and cosponsors of the current Act are Democrats, while the majority of the House is Republican.<sup>59</sup>

### B. *Pet Safety and Protection Act of 2013*

The history of the Animal Welfare Act (AWA) began with the disappearance of a family pet, Pepper the Dalmatian.<sup>60</sup> Soon after Pepper disappeared from home in 1965, her owner spotted her in a newspaper picture of an animal dealer’s overcrowded truck.<sup>61</sup> By the time Pepper’s family tracked her down, she had already been euthanized in an experimental procedure at a New York hospital.<sup>62</sup> Representative Joseph Resnick (D-N.Y.), who had assisted Pepper’s family, introduced H.R. 9743 to require dog and cat dealers to be licensed and inspected by the U.S. Department of Agriculture (USDA).<sup>63</sup> Although Congress did not enact H.R. 9743, the AWA was enacted the following year.<sup>64</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Lib. Cong., Congress.gov, *H.R. 1385—Safe Cosmetics and Personal Care Products Act of 2013*, <http://beta.congress.gov/bill/113th-congress/house-bill/1385/> [<http://perma.cc/RE4T-RGLE>] (accessed Apr. 13, 2014).

<sup>58</sup> Lib. Cong., Congress.gov, *H.R. 2359—Safe Cosmetics Act of 2011*, <http://beta.congress.gov/bill/112th-congress/house-bill/2359/> [<http://perma.cc/V4U4-EFU6>] (accessed Apr. 13, 2014); Lib. Cong., Congress.gov, *H.R. 5786—Safe Cosmetics Act of 2010*, <http://beta.congress.gov/bill/111th-congress/house-bill/5786/> [<http://perma.cc/5U35-B9PX>] (accessed Apr. 13, 2014).

<sup>59</sup> GovTrack.us, *H.R. 1385: Safe Cosmetics and Personal Care Products Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr1385#overview> [<http://perma.cc/QJ3Q-LXVN>]; scroll down to Cosponsors, select show (accessed Apr. 13, 2014); Off. of the Historian & Clerk of the H.’s Off. of Art & Archives, *History, Art & Archives, Party Divisions of the House of Representatives, 1935–Present*, <http://history.house.gov/Institution/Party-Divisions/74-Present/> [<http://perma.cc/AHH5-TMDQ>] (accessed Apr. 13, 2014).

<sup>60</sup> Benjamin Adams & Jean Larson, U.S. Dept. of Agric., *Legislative History of the Animal Welfare Act*, <http://www.nal.usda.gov/awic/pubs/AWA2007/intro.shtml> [<http://perma.cc/C792-QVDP>] (accessed Apr. 13, 2014). *Sports Illustrated* ran an article covering Pepper’s disappearance and the resulting bill, H.R. 9743. Coles Phinizy, *The Lost Pets That Stray to the Labs*, *Sports Illustrated* (Nov. 29, 1965) (available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1077956/1/index.htm> [<http://perma.cc/PF52-JMVR>] (accessed Apr. 13, 2014)).

<sup>61</sup> Adams & Larson, *supra* n. 60.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; Pub. L. No. 89-544, 80 Stat. 350 (1966) (codified at 7 U.S.C. §§ 2131–2159).



The USDA licenses two types of dealers to sell animals to research facilities under the AWA: Class A and Class B dealers.<sup>65</sup> Class A dealers breed their own animals for commercial purposes, including research.<sup>66</sup> In contrast, Class B dealers are legally authorized to acquire their animals from secondary sources: animal shelters, other dealers, and noncommercial breeders.<sup>67</sup> Historically, the Class B dealers who provide research facilities with animal subjects also acquire animals from “bunchers.”<sup>68</sup> Bunchers obtain pets through “free to good home” ads, theft, and other fraudulent means.<sup>69</sup>

Almost fifty years after Congress passed the AWA, dogs and cats are still acquired illegally and sold into research.<sup>70</sup> In the 1990s, a buncher was convicted for obtaining pets from “free to good home” newspaper ads and in turn selling the pets for resale to medical research facilities.<sup>71</sup> In February 2013, two Pennsylvania Class B dealers pled guilty to charges related to the unlawful procurement of hundreds of dogs for resale to medical research facilities.<sup>72</sup>

To help protect pets from being illegally obtained and sold into research, Representative Michael Doyle (D-Pa.) introduced H.R. 2224,<sup>73</sup> the Pet Safety and Protection Act of 2013, on June 3, 2013.<sup>74</sup> The purpose of the Act is to amend the AWA to ensure that all dogs and cats used by research facilities are obtained legally.<sup>75</sup> The Act would limit research facilities to obtaining animals from Class A dealers, pounds or shelters, people donating animals, and licensed research facilities—thus prohibiting Class B dealers from selling pets to research facilities.<sup>76</sup> The Act would also prevent stray animals and lost family pets from being sold to research facilities by limiting shelters to selling animals that the shelter obtained from their legal owners.<sup>77</sup> By prohibiting anyone other than a Class A dealer or a publically owned shelter

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<sup>65</sup> 9 C.F.R. § 1.1 (2013).

<sup>66</sup> *Id.*

<sup>67</sup> Allie Phillips, *How Shelter Pets Are Brokered for Experimentation: Understanding Pound Seizure* 15–16 (Rowman & Littlefield Publishers 2010).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Animal Welfare Inst., *Support the Pet Safety and Protection Act, H.R. 2224*, <https://awionline.org/sites/default/files/uploads/documents/AWI-FactSheet-PSPA-113th.pdf> [<http://perma.cc/4R9F-CT5G>] (accessed Apr. 13, 2014).

<sup>71</sup> See e.g. *U.S. v. Linville*, 10 F.3d 630, 631 (9th Cir. 1993) (describing Brenda Linville’s guilty plea conviction in connection with a scheme to fraudulently obtain pets via “free to good home” ads and then sell the animals to medical research facilities).

<sup>72</sup> Amy Worden, Phila. Inquirer, *Dog Dealers Enter Guilty Pleas*, [http://articles.philly.com/2013-03-02/news/37375164\\_1\\_guilty-pleas-dogs-random-source](http://articles.philly.com/2013-03-02/news/37375164_1_guilty-pleas-dogs-random-source) [<http://perma.cc/B8E4-PH2Z>] (Mar. 2, 2013) (accessed Apr. 13, 2014).

<sup>73</sup> H.R. 2224, 113th Cong. (June 3, 2013) (available at <http://beta.congress.gov/113/bills/hr2224/BILLS-113hr2224ih.pdf> [<http://perma.cc/5FQ8-AXS2>] (accessed Apr. 13, 2014)).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at § 2(a).

<sup>77</sup> *Id.*

from selling dogs or cats to research facilities, the Act seeks to undermine the financial incentive that bunchers and Class B dealers have to traffic in illegally obtained animals.<sup>78</sup>

There is little chance that Congress will enact H.R. 2224. No action has been taken on the bill since June 25, 2013, when it was referred to the Subcommittee on Livestock, Rural Development, and Credit.<sup>79</sup> Since 1996, a version of the Pet Safety and Protection Act has been introduced in Congress almost every year, although none of these bills ever made it out of committee.<sup>80</sup> The language of the current bill is largely unchanged from the original bill introduced in 1996.<sup>81</sup> It appears Congress will need to do more than simply resurrect the same bill every year to actually pass the Pet Safety and Protection Act.

## V. WILDLIFE

### A. *Endangered Species Management Self-Determination Act*

Congress enacted the Endangered Species Act (ESA) in 1973 for the purposes of conserving endangered and threatened species and the ecosystems to which they belong.<sup>82</sup> Finding that Congress has not substantially revised the ESA in over twenty-five years, and believing that it has not achieved its goal of recovering endangered and threatened species, Representative Mark Amodei (R-Nev.) and Senator Rand Paul (R-Ky.) introduced the Endangered Species Management Self-Determination Act into both houses of Congress on November 19, 2013.<sup>83</sup> H.R. 3533 and Sen. 1731 contain identical language, and claim that environmentalists are using the ESA to halt construction of projects and hamper economic growth.<sup>84</sup> Instead, it is believed that lo-

<sup>78</sup> *Id.*

<sup>79</sup> Lib. Cong., Congress.gov, *H.R.2224—Pet Safety and Protection Act of 2013*, <http://beta.congress.gov/bill/113th-congress/house-bill/2224/> [<http://perma.cc/9YRS-YFA6>] (accessed Apr. 13, 2014).

<sup>80</sup> See Lib. Cong., Congress.gov, *Advanced Search*, <http://beta.congress.gov/advanced-search> [<http://perma.cc/8QT9-F5BN>]; *select All Legislation, search keywords* “Pet Safety” (accessed Apr. 13, 2014) (showing versions of the Pet Safety & Protection Act being introduced and failing to pass into law in 1996, 1997, 1998, 1999, 2001, 2002, 2004, 2005, 2006, 2007, 2009, 2011, and 2013); see also Animal Welfare Inst., *Legislative History*, <https://awionline.org/content/legislative-history> [<http://perma.cc/4N44-UDFM>] (accessed Apr. 13, 2014) (outlining attempts to pass versions of the Pet Safety and Protection Act from 1996 onward).

<sup>81</sup> Compare H.R. 2224, 113th Cong. with H.R. 3398, 104th Cong. (May 7, 1996) (available at <http://beta.congress.gov/104/bills/hr3398/BILLS-104hr3398ih.pdf> [<http://perma.cc/799D-T84D>] (accessed Apr. 13, 2014)) (showing minor differences between the 2013 and 1996 bills).

<sup>82</sup> 16 U.S.C. § 1531(b) (2012).

<sup>83</sup> H.R. 3533, 113th Cong. § 3(2) (Nov. 19, 2013) (available at <http://beta.congress.gov/113/bills/hr3533/BILLS-113hr3533ih.pdf> [<http://perma.cc/B7LU-AW5H>] (accessed Apr. 13, 2014)); Sen. 1731, 113th Cong. § 3(2) (Nov. 19, 2013) (available at <http://beta.congress.gov/113/bills/s1731/BILLS-113s1731is.pdf> [<http://perma.cc/86WQ-B5VK>] (accessed Apr. 13, 2014)).

<sup>84</sup> H.R. 3533, 113th Cong. at § 3(6); Sen. 1731, 113th Cong. at § 3(6).

cal governments should manage their own lands and choose the recovery plans that work best for them.<sup>85</sup>

Accordingly, the Act would give more control to local governments by requiring “the consent of the Governor of each State” prior to the Secretary of the Interior’s determination that a species should be listed as endangered or threatened.<sup>86</sup> The Act defines “best scientific and commercial data” to include “any scientific evidence made available to the Secretary by any State agency.”<sup>87</sup> The Act would also establish a process for exclusive state regulation of intrastate endangered or threatened species determined by a state governor to be present only within that state.<sup>88</sup> This determination would not be subject to judicial review in any federal or state court.<sup>89</sup> Species listed as endangered or threatened would automatically be delisted after five years.<sup>90</sup>

Additionally, the Act finds that the ESA “penalizes landowners for owning endangered species habitat by forcing them to bear the cost of conservation,”<sup>91</sup> and therefore seeks to protect the interests of property owners. Under the Act, if the Secretary of the Interior fails to respond within ninety days to a property owner’s application that includes proposed use of the real property, the proposed use shall be considered to not violate any provision of the ESA.<sup>92</sup> The Act would also require the U.S. Fish & Wildlife Service (FWS), if it takes any action under the ESA “that diminishes the fair market value of any real property by not less than 50 percent with respect to the intended use of the real property,” to reimburse the owner of the real property “an amount equal to 150 percent of the fair market value of the real property.”<sup>93</sup>

One environmental journalist has stated that the Act is “one of the most overarching assaults” on the ESA in the forty years since its enactment.<sup>94</sup> Yet GovTrack estimates that the Act has only a 3% chance of passing.<sup>95</sup> Both bills were referred to committee the same day they were introduced, and no action has been taken since.<sup>96</sup> Factors weigh-

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<sup>85</sup> H.R. 3533, 113th Cong. at § 4(9); Sen. 1731, 113th Cong. at § 4(9).

<sup>86</sup> H.R. 3533, 113th Cong. at § 4(1); Sen. 1731, 113th Cong. at § 4(1).

<sup>87</sup> H.R. 3533, 113th Cong. at § 4(2)(D); Sen. 1731, 113th Cong. at § 4(2)(D).

<sup>88</sup> H.R. 3533, 113th Cong. at § 4(9); Sen. 1731, 113th Cong. at § 4(9).

<sup>89</sup> H.R. 3533, 113th Cong. at § 4(9); Sen. 1731, 113th Cong. at § 4(9).

<sup>90</sup> H.R. 3533, 113th Cong. at § 4(3); Sen. 1731, 113th Cong. at § 4(3).

<sup>91</sup> H.R. 3533, 113th Cong. at § 3(5); Sen. 1731, 113th Cong. at § 3(5).

<sup>92</sup> H.R. 3533, 113th Cong. at § 5; Sen. 1731, 113th Cong. at § 5.

<sup>93</sup> H.R. 3533, 113th Cong. at § 5; Sen. 1731, 113th Cong. at § 5.

<sup>94</sup> Chris Clarke, KCET, *Bill Would Gut Endangered Species Act*, <http://www.kcet.org/news/define/rewild/legislation/bill-would-gut-endangered-species-act.html> [<http://perma.cc/P3EP-U3F7>] (Dec. 2, 2013) (accessed Apr. 13, 2014).

<sup>95</sup> GovTrack.us, *S. 1731: Endangered Species Management Self-Determination Act*, <https://www.govtrack.us/congress/bills/113/s1731> [<http://perma.cc/38CH-4TS3>] (accessed Apr. 13, 2014).

<sup>96</sup> Lib. of Cong., Congress.gov, *H.R. 3533—Endangered Species Management Self-Determination Act*, <http://beta.congress.gov/bill/113th-congress/house-bill/3533/all-actions/> [<http://perma.cc/B5LL-6GTX>] (accessed Apr. 13, 2014); Lib. of Cong., Congress.gov, *S. 1731—Endangered Species Management Self-Determination Act*, <http://beta.con>

ing against enactment include its introduction in the first year of the Congress, the sponsor of Sen. 1731 being a member of the minority party, and the Act's cosponsors serving on the committees to which the bills were referred.<sup>97</sup>

### B. *Endangered Species Improvement Act of 2014*

Other members of Congress perceive a weakness in the implementation of the ESA to be that only species on federal land—and not state, local, or private land—are considered when determining whether a species has recovered to the point of being delisted.<sup>98</sup> Representative Chris Stewart (R-Utah) cites an example of prairie dogs in Utah that are not considered in the delisting determination because the prairie dogs prefer to live in “yards, parks, cemeteries, and fields” that are not on federal land.<sup>99</sup> Jay Tutchton, staff attorney for Defenders of Wildlife disagrees, stating that FWS does count species on private lands whenever possible under the “best available science” standard.<sup>100</sup>

To overcome this perceived weakness, Representative Stewart introduced House bill 4256, the Endangered Species Improvement Act of 2014, on March 14, 2014.<sup>101</sup> The Act would require the Secretary of the Interior to “count all of the species without regard to whether it is found on State, private, or tribal lands . . . for purposes of recovery of the species and determination of listing status[.]”<sup>102</sup> GovTrack estimates the Act has a 5% chance of being enacted due to cosponsors serving on the House Natural Resources Committee to which the bill was referred.<sup>103</sup>

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gress.gov/bill/113th-congress/senate-bill/1731/all-actions/ [http://perma.cc/T3VP-WDGB] (accessed Apr. 13, 2014).

<sup>97</sup> GovTrack.us, *H.R. 3533: Endangered Species Management Self-Determination Act*, <https://www.govtrack.us/congress/bills/113/hr3533> [http://perma.cc/VG5G-5RDE]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014); GovTrack.us, *S. 1731: Endangered Species Management Self-Determination Act*, <https://www.govtrack.us/congress/bills/113/s1731> [http://perma.cc/KT4W-ZRZD]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>98</sup> Press Release, U.S. Congressman Chris Stewart, *Stewart Introduces Endangered Species Improvement Act of 2014* (Mar. 17, 2014) (available at <http://stewart.house.gov/ESAImprovementAct> [http://perma.cc/C36M-4YCF] (accessed Apr. 13, 2014)).

<sup>99</sup> *Id.*

<sup>100</sup> Mitch Shaw, Stand. Examr., *Congressman Stewart's Bill Would Rein in Endangered Species Act*, <http://www.standard.net/stories/2014/03/21/congressman-stewarts-bill-would-rein-endangered-species-act> [http://perma.cc/3NET-8L5J] (Mar. 21, 2014) (accessed Apr. 13, 2014).

<sup>101</sup> H.R. 4256, 113th Cong. (Mar. 14, 2014) (available at <http://beta.congress.gov/113/bills/hr4256/BILLS-113hr4256ih.pdf> [http://perma.cc/9CNN-Z38M] (accessed Apr. 13, 2014)).

<sup>102</sup> *Id.* at § 2(a).

<sup>103</sup> GovTrack.us, *H.R. 4256: Endangered Species Improvement Act of 2014*, <https://www.govtrack.us/congress/bills/113/hr4256> [http://perma.cc/AWC6-M454]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

### C. *Big Cats and Public Safety Protection Act*

Big cats kept in captivity by private owners raise safety concerns for both humans and the captive animals. In October 2011, a Zanesville, Ohio man freed his lions, tigers, leopards, mountain lions, and other wild animals right before he killed himself.<sup>104</sup> The tragic incident led police to kill thirty-eight big cats in order to protect citizens.<sup>105</sup> It is estimated there are approximately 10,000 to 20,000 privately owned big cats in the U.S.<sup>106</sup> Since 1992, there have been 248 maulings, 22 human deaths, and 144 big cat deaths as a result of incidents involving big cats.<sup>107</sup> These animals also suffer from neglect and mistreatment in roadside zoos and truck stops.<sup>108</sup>

On May 15, 2013, Representative Howard McKeon (R-Cal.) introduced the Big Cats and Public Safety Protection Act, H.R. 1998.<sup>109</sup> Senator Richard Blumenthal (D-Conn.) introduced an identical bill, Sen. 1381, on July 29, 2013.<sup>110</sup> The bills would amend the Lacey Act Amendments of 1981<sup>111</sup> to further the conservation of big cats and to clarify provisions enacted by the Captive Wildlife Safety Act.<sup>112</sup> The Big Cats and Public Safety Protection Act would prohibit any person from breeding or possessing big cats.<sup>113</sup> It defines breed as “to facilitate the propagation or reproduction (whether intentionally or negli-

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<sup>104</sup> Josh Jarman et al., Columbus Dispatch, *Sheriff: 56 Exotic Animals Escaped from Farm near Zanesville; 49 Killed by Authorities*, <http://www.dispatch.com/content/stories/local/2011/10/18/Wild-animals-loose-in-Muskingum-County.html> [<http://perma.cc/DS3X-JV6H>] (Oct. 19, 2011) (accessed Apr. 13, 2014).

<sup>105</sup> *Id.*

<sup>106</sup> Big Cat Rescue, *Big Cats and Public Safety Protection Act HR1998 S1381*, <http://bigcatrescue.org/big-cats-and-public-safety-protection-hr1998-s1381/> [<http://perma.cc/QXR9-P6LR>] (accessed Apr. 13, 2014).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*; see e.g. Animal Leg. Def. Fund, *Tony, the Truck Stop Tiger*, <http://aldf.org/cases-campaigns/features/tony-the-truck-stop-tiger/> [<http://perma.cc/EF7Y-6KEU>] (accessed Apr. 13, 2014) (discussing the Animal Legal Defense Fund’s efforts to free Tony, a tiger living in a cage at a Louisiana truck stop).

<sup>109</sup> H.R. 1998, 113th Cong. (May 15, 2013) (available at <http://beta.congress.gov/113/bills/hr1998/BILLS-113hr1998ih.pdf> [<http://perma.cc/WN6X-WQNU>] (accessed Apr. 13, 2014)).

<sup>110</sup> Sen. 1381, 113th Cong. (July 29, 2013) (available at <http://beta.congress.gov/113/bills/s1381/BILLS-113s1381is.pdf> [<http://perma.cc/8MYQ-MBCR>] (accessed Apr. 13, 2014)).

<sup>111</sup> 16 U.S.C. §§ 3371–3378 (2012). As it relates to big cats, the Lacey Act makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law. *Id.* at § 3372(a)(2)(A). The Lacey Act defines prohibited wildlife species as any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such a species. *Id.* at § 3371(g).

<sup>112</sup> H.R. 1998, 113th Cong.; Sen. 1381, 113th Cong. The Captive Wildlife Safety Act, enacted in 2003, amended the Lacey Act. Pub. L. No. 108-191, 117 Stat. 2871 (2003).

<sup>113</sup> H.R. 1998, 113th Cong. at § 4(4); Sen. 1381, 113th Cong. at § 3(4).

gently), or to fail to prevent the propagation or reproduction, of a prohibited wildlife species or other animal.”<sup>114</sup>

Just as the 2012 Senate and House versions of the bill did not make it out of committee or subcommittee,<sup>115</sup> the version of the current bill is not likely to make it out of committee or subcommittee of either house. H.R. 1998 was referred to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs the week after it was introduced and no further action has been taken.<sup>116</sup> Sen. 1381 was referred to the Committee on Environment and Public Works the day it was introduced and has received no further action.<sup>117</sup>

#### D. *Wildlife Veterinarians Employment and Training Act of 2013*

Wildlife veterinarians play a critical role in managing U.S. wildlife populations, responding to disasters that affect wildlife, and conserving endangered and threatened species.<sup>118</sup> Wildlife veterinary students require additional years of specialized training.<sup>119</sup> Veterinary students specializing in wildlife incur more debt, and usually face below average starting salaries and fewer job opportunities in their specialty.<sup>120</sup>

Recognizing the importance of protecting wildlife and the need for veterinary specialists,<sup>121</sup> Representative Alcee Hastings (D-Fla.) introduced the Wildlife Veterinarians Employment and Training Act of 2013, H.R. 2796, also known as the Wildlife VET Act, on July 23, 2013.<sup>122</sup> The Act focuses on expanding the workforce of wildlife veteri-

<sup>114</sup> H.R. 1998, 113th Cong. at § 3(a)(2); Sen. 1381, 113th Cong. at § 2(a)(2).

<sup>115</sup> Lib. of Cong., Congress.gov, *H.R. 4122—Big Cats and Public Safety Protection Act*, <http://beta.congress.gov/bill/112th-congress/house-bill/4122/all-actions> [<http://perma.cc/65GG-67QU>] (accessed Apr. 13, 2014); Lib. of Cong., Congress.gov, *S. 3547—Big Cats and Public Safety Protection Act*, <http://beta.congress.gov/bill/112th-congress/senate-bill/3547/all-actions> [<http://perma.cc/GL7G-HMKN>] (accessed Apr. 13, 2014).

<sup>116</sup> Lib. of Cong., Congress.gov, *H.R. 1998—Big Cats and Public Safety Protection Act*, <http://beta.congress.gov/bill/113th-congress/house-bill/1998/all-actions> [<http://perma.cc/BE78-7J29>] (accessed Apr. 13, 2014).

<sup>117</sup> Lib. of Cong., Congress.gov, *S. 1381—Big Cats and Public Safety Protection Act*, <http://beta.congress.gov/bill/113th-congress/senate-bill/1381/all-actions> [<http://perma.cc/3SBU-3EJL>] (accessed Apr. 13, 2014).

<sup>118</sup> Press Release, Am. Veterinary Med. Assn., *AVMA Commends Legislation to Support Wildlife, Zoological Veterinary Medicine* (July 24, 2013) (available at <https://www.avma.org/News/PressRoom/Pages/AVMA-Commends-Legislation-to-Support-Wildlife-Zoological-Veterinary-Medicine.aspx> (accessed Apr. 13, 2014)).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> 159 Cong. Rec. E1119 (daily ed. July 23, 2013) (available at <http://beta.congress.gov/crec/2013/07/23/CREC-2013-07-23.pdf> [<http://perma.cc/42Q8-M7DV>] (accessed Apr. 13, 2014)).

<sup>122</sup> H.R. 2796, 113th Cong. (July 23, 2013) (available at <http://beta.congress.gov/113/bills/hr/2796/BILLS-113hr2796ih.pdf> [<http://perma.cc/JXP4-LW5T>] (accessed Apr. 13, 2014)); Lib. Cong., Congress.gov, *H.R. 2796—Wildlife VET Act*, <http://beta.congress.gov/bill/113th-congress/house-bill/2796> [<http://perma.cc/VV83-M7PJ>] (accessed Apr. 13, 2014).

narians and developing educational programs focused on wildlife and zoological veterinary medicine.<sup>123</sup>

The Wildlife VET Act seeks to expand the workforce by reducing the amount of debt that students incur. The Act would create grants, scholarships, and a loan repayment program for wildlife and zoological veterinarians.<sup>124</sup> The Act would also create a grant program to further educational development in the wildlife veterinary field; grants would be awarded to schools and colleges that develop or improve curricula specializing in wildlife or zoological veterinary medicine.<sup>125</sup> Grants would also be awarded to eligible wildlife or veterinary institutions that establish or expand training programs to allow trainees to practice in the wildlife or zoological specialty.<sup>126</sup>

It is unlikely that Congress will enact the Wildlife VET Act. The Act was referred to two subcommittees, but has not moved through either one.<sup>127</sup> The previous versions of the bill introduced in 2010 and 2012 failed to make it out of committee.<sup>128</sup>

## VI. COMPANION ANIMALS

### A. *Puppy Uniform Protection and Safety Act*

The Animal Welfare Act (AWA), which regulates retail pet stores, was written long before the advent of the Internet, and it has not been interpreted to apply to online pet sales.<sup>129</sup> Unscrupulous breeders have taken advantage of this loophole to sell pets online and escape federal oversight.<sup>130</sup> The result is the increased use of “puppy mills,” a

<sup>123</sup> H.R. 2796, 113th Cong.

<sup>124</sup> *Id.* at §§ 101–103.

<sup>125</sup> *Id.* at § 201(a).

<sup>126</sup> *Id.* at § 202(a).

<sup>127</sup> Lib. Cong., Congress.gov, *H.R. 2796—Wildlife VET Act*, <http://beta.congress.gov/bill/113th-congress/house-bill/2796/all-actions> [<http://perma.cc/GT7L-WREM>] (accessed Apr. 13, 2014).

<sup>128</sup> Lib. Cong., Congress.gov, *H.R. 3886—Wildlife VET Act*, <http://beta.congress.gov/bill/112th-congress/house-bill/3886/all-actions> [<http://perma.cc/724L-YQLB>] (accessed Apr. 13, 2014); Lib. Cong., Congress.gov, *H.R. 4497—Wildlife and Zoological Veterinary Medicine Enhancement Act of 2010*, <http://beta.congress.gov/bill/111th-congress/house-bill/4497/all-actions> [<http://perma.cc/B562-NUEK>] (accessed Apr. 13, 2014).

<sup>129</sup> See 78 Fed. Reg. 57227, 57277 (Sept. 18, 2013) (describing that the prior regulatory definition of “retail pet stores” left a loophole for Internet sales); Press Release, U.S. Dept. of Agric., Animal & Plant Health Inspection Serv., *USDA Restores Important Check and Balance on Retail Pet Sales to Ensure Health, Humane Treatment* (Sept. 10, 2013) (available at [http://www.aphis.usda.gov/newsroom/2013/09/pdf/retail\\_pet\\_final\\_rule.pdf](http://www.aphis.usda.gov/newsroom/2013/09/pdf/retail_pet_final_rule.pdf) [<http://perma.cc/AW7Y-6W5Z>] (accessed Apr. 13, 2014)) (noting that “[t]he previous definition of ‘retail pet store’ was developed . . . before the Internet provided an alternate method of selling pets to the public,” and that a revised definition is needed to “restore an important check and balance that helps ensure the health and humane treatment of pet[s]”).

<sup>130</sup> Press Release, Humane Socy. of the U.S., *Federal Lawmakers Push to Protect Dogs in Puppy Mills* (Feb. 27, 2013) (available at [http://www.humanesociety.org/news/press\\_releases/2013/02/PUPS-Act-2013-022713.html](http://www.humanesociety.org/news/press_releases/2013/02/PUPS-Act-2013-022713.html) [<http://perma.cc/G723-SRA9>] (accessed Apr. 13, 2014)).

term that evokes images of stacks of filthy cages, overstuffed with malnourished and unhealthy dogs.<sup>131</sup>

Both houses of Congress introduced the Puppy Uniform Protection and Safety Act on February 27, 2013.<sup>132</sup> Representative Jim Gerlach (R-Pa.) introduced H.R. 847 and Senator Richard Durbin (D-Ill.) introduced Sen. 395.<sup>133</sup> The Act aims to provide further protection for puppies by amending the AWA.<sup>134</sup>

The Act would close the Internet loophole by defining “high volume retail breeder” to include a person who “sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper)” more than fifty puppies in a one-year period.<sup>135</sup> The Act would also require that dogs at least twelve weeks old have daily access to exercise in an area that is clean and free from infestation.<sup>136</sup> Importantly, the Act would not preempt any state law that provides equivalent or greater protection for animals.<sup>137</sup>

Even with bipartisan support, the Puppy Uniform Protection and Safety Act is yet another Act unlikely to be passed by Congress. Both bills have stalled in committee. There has been no action on the Senate bill since the day it was introduced and referred to the Committee on Agriculture, Nutrition, and Forestry.<sup>138</sup> The last action taken on the House bill was referral to the Subcommittee on Livestock, Rural Development, and Credit on March 13, 2013.<sup>139</sup> None of the previous versions of the Act—introduced in 2008, 2010, and 2011—made it out of committee.<sup>140</sup>

<sup>131</sup> *Id.*

<sup>132</sup> H.R. 847, 113th Cong. (Feb. 27, 2013) (available at <http://beta.congress.gov/113/bills/hr847/BILLS-113hr847ih.pdf> [<http://perma.cc/H6W4-35U5>] (accessed Apr. 13, 2014)); Sen. 395, 113th Cong. (Feb. 27, 2013) (available at <http://beta.congress.gov/113/bills/s395/BILLS-113s395is.pdf> [<http://perma.cc/ZZ8X-TRWY>] (accessed Apr. 13, 2014)).

<sup>133</sup> Lib. Cong., Congress.gov, *H.R. 847—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/113th/congress/house-bill/847> [<http://perma.cc/V5PX-9FAJ>] (accessed Apr. 13, 2014); Lib. Cong., Congress.gov, *S. 395—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/113th-congress/senate-bill/395> [<http://perma.cc/5XYN-HJG7>] (accessed Apr. 13, 2014).

<sup>134</sup> H.R. 847, 113th Cong.; Sen. 395, 113th Cong.

<sup>135</sup> H.R. 847, 113th Cong. at § 2(a)(5); Sen. 395, 113th Cong. at § 2(a)(4).

<sup>136</sup> H.R. 847, 113th Cong. at § 2(c)(3); Sen. 395, 113th Cong. at § 2(c)(3).

<sup>137</sup> H.R. 847, 113th Cong. at § 4; Sen. 395, 113th Cong. at § 4.

<sup>138</sup> Lib. Cong., Congress.gov, *S. 395—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/113th-congress/senate-bill/395/> [<http://perma.cc/SUN7-C98U>] (accessed Apr. 13, 2014).

<sup>139</sup> Lib. Cong., Congress.gov, *H.R. 847—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/113th-congress/house-bill/847/> [<http://perma.cc/4M6T-88CM>] (accessed Apr. 13, 2014).

<sup>140</sup> Lib. Cong., Congress.gov, *H.R. 835—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/112th-congress/house-bill/835/all-actions> [<http://perma.cc/6SZ8-DM3Z>] (accessed Apr. 13, 2014); Lib. Cong., Congress.gov, *S. 3424—Puppy Uniform Protection and Safety Act*, <http://beta.congress.gov/bill/111th-congress/senate-bill/3424/all-actions> [<http://perma.cc/U9BM-KCZJ>] (accessed Apr. 13, 2014); Lib. Cong., Congress.gov, *H.R. 6949—Puppy Uniform Protection and Safety Act*, <http://beta.con>



Fortunately for puppy mill puppies, the U.S. Department of Agriculture (USDA) has expanded the scope of its enforcement of the AWA.<sup>141</sup> The USDA narrowed the definition of “retail pet store” to “mean 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[.]”<sup>142</sup> This means that online sellers no longer meet the definition of retail pet stores, so they are no longer exempt from obtaining an AWA license.<sup>143</sup> Internet-based pet sellers must now be licensed and inspected by the USDA’s Animal and Plant Health Inspection Service.<sup>144</sup>

### B. *Pets on Trains Act of 2013*

Currently, Amtrak only permits service animals to travel on its trains.<sup>145</sup> The Pets on Trains Act of 2013, H.R. 2066, intends to change that by allowing domesticated dogs and cats to travel on Amtrak trains.<sup>146</sup> Representative Jeff Denham (R-Cal.) introduced H.R. 2066 on May 21, 2013.<sup>147</sup> The House bill is the rare animal-related legislation this session that has more Republican cosponsors than Democratic cosponsors.<sup>148</sup> Senator Sheldon Whitehouse (D-R.I.) introduced an identical bill, Sen. 1710, on November 14, 2013.<sup>149</sup>

The Pets on Trains Act would allow Amtrak passengers to transport cats and dogs in the same manner as carry-on baggage or

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gress.gov/bill/110th-congress/house-bill/6949/all-actions [http://perma.cc/679V-XMJF] (accessed Apr. 13, 2014).

<sup>141</sup> Steven Nelson, U.S. News, *USDA Preempts Congress, Enacts Online Pet-Dealing Rules*, <http://www.usnews.com/news/articles/2013/09/10/usda-preempts-congress-enacts-online-pet-dealing-rules> [http://perma.cc/U9KG-GRB4] (Sept. 10, 2013) (accessed Apr. 13, 2014).

<sup>142</sup> 78 Fed. Reg. at 57227 (codified at 9 C.F.R. § 1.1).

<sup>143</sup> U.S. Dept. of Agric., Animal & Plant Health Inspection Serv., *Questions and Answers: Retail Pet Store Final Rule* (Dec. 2013) (available at [http://www.aphis.usda.gov/publications/animal\\_welfare/2013/faq\\_retail\\_pets\\_final\\_rule.pdf](http://www.aphis.usda.gov/publications/animal_welfare/2013/faq_retail_pets_final_rule.pdf) [http://perma.cc/L4BW-3TCK] (accessed Apr. 13, 2014)).

<sup>144</sup> *Id.*

<sup>145</sup> Amtrak, *Service Animals and Pet Policy*, <http://www.amtrak.com/service-animals-and-pet-policy> [http://perma.cc/9RE7-RB4T] (accessed Apr. 13, 2014).

<sup>146</sup> H.R. 2066, 113th Cong. (May 21, 2013) (available at <http://beta.congress.gov/113/bills/hr2066/BILLS-113hr2066ih.pdf> [http://perma.cc/BW2E-3A6X] (accessed Apr. 13, 2014)); Sen. 1710, 113th Cong. (Nov. 14, 2013) (available at <http://beta.congress.gov/113/bills/s1710/BILLS-113s1710is.pdf> [http://perma.cc/GW6Y-QB24] (accessed Apr. 13, 2014)).

<sup>147</sup> Lib. Cong., Congress.gov, *H.R. 2066—Pets on Trains Act of 2013*, <http://beta.congress.gov/bill/113th-congress/house-bill/2066> [http://perma.cc/Y7YE-MEWQ] (accessed Apr. 13, 2014).

<sup>148</sup> Lib. Cong., Congress.gov, *H.R. 2066—Pets on Trains Act of 2013*, <http://beta.congress.gov/bill/113th/house-bill/2066/cosponsors> [http://perma.cc/M9SX-CJA9] (accessed Apr. 13, 2014) (showing eighteen Republican cosponsors and fifteen Democratic cosponsors).

<sup>149</sup> Lib. Cong., Congress.gov, *S. 1710—Pets on Trains Act of 2013*, <http://beta.congress.gov/bill/113th/senate-bill/1710/related-bills> [http://perma.cc/LM9R-33RG] (accessed Apr. 13, 2014).

cargo.<sup>150</sup> Cats and dogs would have to travel in kennels<sup>151</sup> and would not be allowed to travel a distance longer than 750 miles.<sup>152</sup> The Act would require passengers to pay a fee for the pets they transport.<sup>153</sup> The Act would be separate from and would not affect the policy for passengers traveling with service animals.<sup>154</sup>

In comparison to other proposed animal-related legislation discussed in this Review, H.R. 2066 has a relatively high probability of being enacted.<sup>155</sup> Although no action has been taken since the bill was referred to the Subcommittee on Railroads, Pipelines, and Hazardous Materials on May 22, 2013, GovTrack gives the bill an 87% chance of getting past committee.<sup>156</sup> The high percentage of passage predicted is due in part to the fact that the sponsor, Representative Denham, is the chairman of the Subcommittee on Railroads, Pipelines, and Hazardous Materials.<sup>157</sup> GovTrack also predicts a 74% chance that Congress will enact H.R. 2066.<sup>158</sup> Several factors that correlate with successful bills apply to H.R. 2066: the sponsor is a member of the majority party, at least one-third of the cosponsors are from the minority party, and the bill's companion Sen. 1710 was sponsored by a member of the other party.<sup>159</sup>

Amtrak recently announced the introduction of a pilot program for pets on board its trains.<sup>160</sup> Amtrak is supportive of allowing pets on its trains and is working with a group led by Representative Denham.<sup>161</sup>

<sup>150</sup> H.R. 2066, 113th Cong. at § 2(b)(1)–(2); Sen. 1710, 113th Cong. at § 2(b)(1)–(2).

<sup>151</sup> H.R. 2066, 113th Cong. at § 2(b)(1)(A), (2)(A); Sen. 1710, 113th Cong. at § 2(b)(1)(A), (2)(A).

<sup>152</sup> H.R. 2066, 113th Cong. at § 2(b)(1)(C), (2)(C); Sen. 1710, 113th Cong. at § 2(b)(1)(C), (2)(C).

<sup>153</sup> H.R. 2066, 113th Cong. at § 2(c); Sen. 1710, 113th Cong. at § 2(c).

<sup>154</sup> H.R. 2066, 113th Cong. at § 2(d)(1); Sen. 1710, 113th Cong. at § 2(d)(1).

<sup>155</sup> GovTrack.us, *H.R. 2066: Pets on Trains Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr2066#overview> [<http://perma.cc/F5YV-DUE9>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>156</sup> Lib. Cong., Congress.gov, *H.R. 2066—Pets on Trains Act of 2013*, <http://beta.congress.gov/bill/113th-congress/house-bill/2066/all-actions> [<http://perma.cc/JHJ3-NF9A>] (accessed Apr. 13, 2014); GovTrack.us, *H.R. 2066: Pets on Trains Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr2066#overview> [<http://perma.cc/F5YV-DUE9>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>157</sup> GovTrack.us, *H.R. 2066: Pets on Trains Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr2066#overview> [<http://perma.cc/F5YV-DUE9>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014); H.R. Comm. on Transp. & Infrastructure, *Railroads, Pipelines, and Hazardous Materials*, <http://transportation.house.gov/subcommittees/subcommittee/?ID=107421> [<http://perma.cc/9RNK-YL84>] (accessed Apr. 13, 2014).

<sup>158</sup> GovTrack.us, *H.R. 2066: Pets on Trains Act of 2013*, <https://www.govtrack.us/congress/bills/113/hr2066#overview> [<http://perma.cc/F5YV-DUE9>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>159</sup> *Id.*

<sup>160</sup> Press Release, Amtrak, *Illinois DOT and Amtrak to Allow Pets Aboard as a Test between Chicago and Quincy* (Apr. 28, 2014) (available at <http://www.amtrak.com/ccurl/19/793/Amtrak-Illinois-Pets-on-Train-Pilot-ATK-14-043a.pdf> [<http://perma.cc/7LNF-R2YH>] (accessed Apr. 13, 2014)).

<sup>161</sup> *Id.*

The pilot program is being tested from May 2014 through November 2014 on an Amtrak route in Illinois.<sup>162</sup> Only one pet per passenger is allowed and the fee is \$25.<sup>163</sup>

*C. Resolution Expressing Support for National Animal Rescue Day*

Nationwide, between 5 million and 7 million companion animals enter animal shelters on a yearly basis.<sup>164</sup> Shelters euthanize approximately 3 million to 4 million animals per year.<sup>165</sup> To help create awareness and encourage adoption from animal shelters, Representative Robert Andrews (D-N.J.) introduced H. Res. 63 on February 12, 2013.<sup>166</sup> The resolution expresses support for designating the first Saturday in October as “National Animal Rescue Day/Winslow’s Day.”<sup>167</sup> The resolution also aims to educate pet owners about the importance of spaying and neutering pets and creating a humane environment for pets.<sup>168</sup> The resolution’s sponsor is a member of the minority party.<sup>169</sup> This resolution is unlikely to make it out of the House Oversight and Government Reform Committee to which it was referred.<sup>170</sup>

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Am. Socy. for the Prevention of Cruelty to Animals, *Pet Statistics*, <http://www.aspc.org/about-us/faq/pet-statistics> [<http://perma.cc/B9A4-C5LB>] (accessed Apr. 13, 2014).

<sup>165</sup> *Id.*

<sup>166</sup> H.R. Res. 63, 113th Cong. (Feb. 12, 2013) (available at <http://beta.congress.gov/113/bills/hres63/BILLS-113hres63ih.pdf> [<http://perma.cc/69QE-CX4V>] (accessed Apr. 13, 2014)); GovTrack.us, *H. Res. 63: Expressing Support for Designation of the First Saturday in October as “National Animal Rescue Day/Winslow’s Day” . . .*, <https://www.govtrack.us/congress/bills/113/hres63> [<http://perma.cc/EM9R-DXSF>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>167</sup> H. Res. 63, 113th Cong. Winslow is a Basset Hound who was confined to a small cage for the first eight months of his life, was placed in multiple animal shelters, and finally was adopted into a loving home. *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> GovTrack.us, *H. Res. 63: Expressing Support for Designation of the First Saturday in October as “National Animal Rescue Day/Winslow’s Day” . . .*, <https://www.govtrack.us/congress/bills/113/hres63> [<http://perma.cc/EM9R-DXSF>]; *scroll down to Prognosis, select show factors* (accessed Apr. 13, 2014).

<sup>170</sup> *Id.*